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**HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
INFORMATION REDACTED**

Transcript of Scott Ellington

Date: July 29, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION 4 In re § 5 HIGHLAND CAPITAL § Chapter 11 6 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11 7 Debtor. § 8 UBS SECURITIES LLC AND § 9 UBS AG LONDON BRANCH, § 10 Plaintiffs, § Adversary Proceeding 11 vs. § No. 21-03020-sgj 12 HIGHLAND CAPITAL § 13 MANAGEMENT, L.P., § 14 Defendant. § 15 HIGHLY CONFIDENTIAL 16 SUBJECT TO PROTECTIVE ORDER 17 INFORMATION REDACTED 18 Videotaped Deposition of 19 SCOTT BYRON ELLINGTON 20 Conducted Virtually 21 Thursday, July 29, 2021 22 10:39 a.m. EST 23 Job No.: 386794 24 Pages: 1 - 407 25 Reported by: Lisa M. Barrett, RPR, CRR, CRC, CSR</p>	<p>1 APPEARANCES 2 ON BEHALF OF PLAINTIFFS UBS SECURITIES LLC 3 AND UBS AG LONDON BRANCH: 4 Andrew B. Clubok (Via Zoom) 5 LATHAM & WATKINS LLP 6 555 Eleventh Street, N.W., Suite 1000 7 Washington, D.C. 20004 8 (202) 637-2200 9 Andrew.clubok@lw.com 10 11 Shannon E. McLaughlin 12 Robert Allen 13 LATHAM & WATKINS LLP 14 1271 Avenue of the Americas 15 New York, NY 10020 16 (212) 906-4612 17 Shannon.mclaughlin@lw.com 18 19 20 21 22 23 24 25</p>
<p>1 Videotaped virtual deposition of SCOTT BYRON 2 ELLINGTON, pursuant to notice, before Lisa M. 3 Barrett, a Certified Shorthand Reporter, 4 Registered Professional Reporter, Certified 5 Realtime Reporter, and a Notary Public in and for 6 the State of Maryland. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED 2 ON BEHALF OF DEFENDANT HIGHLAND CAPITAL 3 MANAGEMENT, L.P.: 4 Robert J. Feinstein (Via Zoom) 5 Greg Demo 6 PACHULSKI STANG ZIEHL & JONES LLP 7 780 Third Avenue, 34th Floor 8 New York, New York 10017-2024 9 (212) 561-7700 10 Rfeinstein@pszjlaw.com 11 12 13 ON BEHALF OF THE WITNESS: 14 Frances A. Smith 15 Eric Soderlund 16 ROSS & SMITH, PC 17 700 N. Pearl Street, Suite 1610 18 Dallas, Texas 75201 19 (214) 377-7879 20 Frances.smith@judithwross.com 21 22 23 24 25</p>

Conducted on July 29, 2021

<p>5</p> <p>1 APPEARANCES CONTINUED</p> <p>2</p> <p>3 ON BEHALF OF THE WITNESS:</p> <p>4 Debra A. Dandeneau</p> <p>5 Michelle Hartmann</p> <p>6 BAKER & MCKENZIE, LLP</p> <p>7 452 Fifth Avenue</p> <p>8 New York, New York 10018</p> <p>9 (212) 626-4875</p> <p>10 Debra.dandeneau@bakermckenzie.com</p> <p>11 Michelle.hartmann@bakermckenzie.com</p> <p>12</p> <p>13 Videographer: Robert Leonard</p> <p>14 Remote Technician: Nate Riveness</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 DEPOSITION EXHIBITS</p> <p>2 SCOTT B. ELLINGTON</p> <p>3 July 29, 2021</p> <p>4 (Retained by counsel)</p> <p>5 NUMBER DESCRIPTION MARKED</p> <p>6 Exhibit 86 Notice of Transfer of Claim 41</p> <p>7 Other Than for Security</p> <p>8 Case. No. 19-34054-sgj11</p> <p>9 Two pages</p> <p>10 Exhibit 87 Email from Isaac Leventon to 265</p> <p>11 Scott Ellington, September</p> <p>12 9, 2019, Bates Nos.</p> <p>13 UBSPROD2502008 to -2009</p> <p>14 with attachment, NREF Timeline</p> <p>15 Exhibit 88 Email from Stephanie Vitiello 313</p> <p>16 to Isaac Leventon, dated April</p> <p>17 11, 2017 showing attachment</p> <p>18 UBS_Settlement Structure (SV)</p> <p>19 UBSPROD4837429</p> <p>20 Exhibit 89 Email from JP Sevilla to Scott 315</p> <p>21 Ellington dated 11 August 2017</p> <p>22 with forwarded email</p> <p>23 Bates Nos. USBPROD2632632-33</p> <p>24</p> <p>25</p>
<p>6</p> <p>1 INDEX</p> <p>2 SCOTT B. ELLINGTON</p> <p>3 JULY 29, 2021</p> <p>4 PAGE</p> <p>5 APPEARANCES 11</p> <p>6</p> <p>7 PROCEEDINGS 11</p> <p>8</p> <p>9 EXAMINATION OF SCOTT B. ELLINGTON</p> <p>10 BY MR. CLUBOK 11</p> <p>11 MARKED HIGHLY CONFIDENTIAL 28</p> <p>12</p> <p>13 REPORTER'S CERTIFICATION 407</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>8</p> <p>1 DEPOSITION EXHIBITS CONTINUED</p> <p>2 SCOTT B. ELLINGTON</p> <p>3 July 29, 2021</p> <p>4 NUMBER DESCRIPTION MARKED</p> <p>5</p> <p>6 Exhibit 90 Email from Stephanie Vitiello 383</p> <p>7 to Isaac Leventon dated</p> <p>8 11 April 2017 with attachments</p> <p>9 Bates Nos. UBSPROD4837429-7444</p> <p>10 Exhibit 91 Email from Stephanie Vitiello 387</p> <p>11 to Isaac Leventon, dated</p> <p>12 12 April 2017, Bates Nos.</p> <p>13 UBSPROD4837505-7524</p> <p>14 Exhibit 92 Email from Stephanie Vitiello 391</p> <p>15 to Isaac Leventon, dated</p> <p>16 12 April, 2017, Bates Nos.</p> <p>17 UBSPROD4837593-7610</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>9</p> <p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit 50 140</p> <p>6 Exhibit 26 152</p> <p>7 Exhibit 77 156</p> <p>8 Exhibit 39 190</p> <p>9 Exhibit 26 197</p> <p>10 Exhibit 28 199</p> <p>11 Exhibit 61 255</p> <p>12 Exhibit 47 284</p> <p>13 Exhibit 2 310</p> <p>14 Exhibit 82 329</p> <p>15 Exhibit 38 333</p> <p>16 Exhibit 55 339</p> <p>17 Exhibit 69 354</p> <p>18 Exhibit 70 365</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>11</p> <p>1 states Bankruptcy Court for the Northern District</p> <p>2 of Texas, Dallas Division. Case number</p> <p>3 1934054FGJ11.</p> <p>4 Today's date is July 29th, 2021.</p> <p>5 The time on my video monitor is</p> <p>6 10:40 a.m., eastern time.</p> <p>7 My name is Robert Leonard. I'm the</p> <p>8 Video Specialist. I represent Planet Depos.</p> <p>9 This deposition is being taken via Zoom</p> <p>10 online.</p> <p>11 Will counsel please identify themselves</p> <p>12 verbally and state who they represent.</p> <p>13 MR. CLUBOK: Good morning. This is</p> <p>14 Andrew Clubok and Shannon McLaughlin from Latham &</p> <p>15 Watkins LLP on behalf of UBS.</p> <p>16 MR. FEINSTEIN: Good morning. This is</p> <p>17 Robert Feinstein, Pachulski Stang Ziehl & Jones.</p> <p>18 We are counsel for the defendant in the adversary</p> <p>19 proceeding, Highland Capital Management LP.</p> <p>20 My colleague Greg Demo is also on the</p> <p>21 Zoom.</p> <p>22 MS. SMITH: Good morning. Frances</p> <p>23 Smith with Ross and Smith on behalf of the</p> <p>24 non-party witness, Scott Ellington.</p> <p>25 MR. CLUBOK: Okay. Can you swear the</p>
<p>10</p> <p>1 HIGHLY CONFIDENTIAL</p> <p>2 Videotaped Deposition of Scott Ellington</p> <p>3 Conducted Virtually</p> <p>4 Thursday, July 29, 2021</p> <p>5 --- Commencing at 10:30 a.m. (EST)</p> <p>6 REMOTE TECHNICIAN: Thank you to</p> <p>7 everyone for attending this proceeding remotely,</p> <p>8 which we anticipate will run smoothly.</p> <p>9 Please remember to speak slowly and do</p> <p>10 your best not to talk over one another. Please be</p> <p>11 aware that we are recording the proceeding for</p> <p>12 backup purposes. Any off-the-record discussion</p> <p>13 should be had away from the computer. Please</p> <p>14 remember to mute your mic for those conversations.</p> <p>15 Have your video enabled to help the</p> <p>16 reporter identify who is speaking. If you are</p> <p>17 unable to connect with the video and are</p> <p>18 connecting via phone, please identify yourself</p> <p>19 each time.</p> <p>20 And apologies in advance for any</p> <p>21 technical-related interruptions. Thank you.</p> <p>22 THE VIDEOGRAPHER: Here begins video</p> <p>23 file number 1 in the video deposition of Scott</p> <p>24 Ellington in the matter of UBC (sic) Securities</p> <p>25 versus Highland Capital Management in the United</p>	<p>12</p> <p>1 witness in, please.</p> <p>2 THE VIDEOGRAPHER: The court reporter</p> <p>3 today is Lisa Barrett. She also represents Planet</p> <p>4 Depos.</p> <p>5 Will the court reporter please swear in</p> <p>6 the witness.</p> <p>7 (OATH STIPULATION)</p> <p>8 SCOTT BYRON ELLINGTON, called as a witness,</p> <p>9 having been duly sworn was examined</p> <p>10 and testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Okay. Good morning, Mr. Ellington.</p> <p>14 A Good morning, Mr. Clubok.</p> <p>15 Q Can you state your full name, please?</p> <p>16 A Scott Byron Ellington.</p> <p>17 Q What is your home address?</p> <p>18 A I currently don't have a home address.</p> <p>19 I recently sold the place I was living.</p> <p>20 Q Where are you living right now?</p> <p>21 A I'm staying between my father's house</p> <p>22 and my girlfriend's house.</p> <p>23 Q And today, you are taking the</p> <p>24 deposition at your girlfriend's house.</p> <p>25 A Correct.</p>

Conducted on July 29, 2021

<p>13</p> <p>1 Q And that is Stephanie Archer.</p> <p>2 A That is.</p> <p>3 <-- HIGHLY CONFIDENTIAL</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 --></p> <p>9 Q So you currently have no principal</p> <p>10 residence at all.</p> <p>11 A Not right now, no.</p> <p>12 Q You recently purchased a property to</p> <p>13 build a home on?</p> <p>14 A Not to build a home on, no. I recently</p> <p>15 purchased a property to move into, but it's not</p> <p>16 available to move into yet.</p> <p>17 <-- HIGHLY CONFIDENTIAL</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 --></p>	<p>15</p> <p>1 person today?</p> <p>2 A No, I do not.</p> <p>3 Q Where is it?</p> <p>4 A I believe it's at my dad's house.</p> <p>5 Because I recently moved, I have stuff in several</p> <p>6 locations.</p> <p>7 Q Did you have that phone with you when</p> <p>8 you were in Africa on a recent trip?</p> <p>9 A I did.</p> <p>10 Q And did you get that phone -- you</p> <p>11 mentioned Skyview.</p> <p>12 What's Skyview?</p> <p>13 A Skyview is an entity that I am</p> <p>14 currently employed by.</p> <p>15 Q Did -- when did you get that phone</p> <p>16 associated with Skyview?</p> <p>17 A I don't know the exact date. They set</p> <p>18 it up for me. I don't know the date, I'd have to</p> <p>19 look, a couple of months ago.</p> <p>20 Q Since you left the employment of</p> <p>21 Highland Capital Management?</p> <p>22 A Yes.</p> <p>23 Q And do you have any other phone numbers</p> <p>24 currently?</p> <p>25 A No.</p>
<p>14</p> <p>1 number that I've had for many years. I don't</p> <p>2 really use that anymore. It's a legacy number</p> <p>3 that I'm -- have people that still correspond to</p> <p>4 me on that, so I left it open to see -- tell</p> <p>5 people the new numbers I use.</p> <p>6 Q Any other phones that you currently</p> <p>7 have?</p> <p>8 A I do. I have one in front of me, if I</p> <p>9 could look, Mr. Clubok. I actually don't know the</p> <p>10 number on it because it is only for my family and</p> <p>11 close friends.</p> <p>12 Do you mind if I look?</p> <p>13 Q Sure.</p> <p>14 A Okay. It is -- sorry, it's opening, I</p> <p>15 <-- HIGHLY CONFIDENTIAL --></p> <p>16 Q And you say that number you only use</p> <p>17 for family and close friends, not for work, I take</p> <p>18 it?</p> <p>19 A Not for work at all, no.</p> <p>20 Q Any other phone number that you</p> <p>21 currently have?</p> <p>22 A There is a phone that's owned by</p> <p>23 Skyview that I don't know the phone number. I can</p> <p>24 get that to you at a later date.</p> <p>25 Q Do you have that phone with you on your</p>	<p>16</p> <p>1 Q Have you had any other phone numbers --</p> <p>2 strike that.</p> <p>3 Have you had any other phone numbers</p> <p>4 that you have used for any purpose in the last two</p> <p>5 years --</p> <p>6 A No.</p> <p>7 Q -- aside from the ones you've</p> <p>8 identified?</p> <p>9 A No. Other than my desk phone number at</p> <p>10 Highland, no.</p> <p>11 Q Have you ever had -- have you ever</p> <p>12 referred to a burner phone?</p> <p>13 A Never. I don't really even understand</p> <p>14 what that is.</p> <p>15 Q Okay. What's your current -- who's</p> <p>16 your current employer?</p> <p>17 A Skyview.</p> <p>18 Q What's the business address of Skyview?</p> <p>19 A I don't know the business address of</p> <p>20 Skyview. I don't know what they've registered it</p> <p>21 as.</p> <p>22 Q Where do you -- do you have a office</p> <p>23 for Skyview --</p> <p>24 A There is not office space yet, no.</p> <p>25 Q Do you have any business office</p>

Conducted on July 29, 2021

<p>17</p> <p>1 anywhere right now?</p> <p>2 A No, I do not.</p> <p>3 Q Does anybody who works for -- how many</p> <p>4 employees does Skyview have?</p> <p>5 A I believe there is right around 40. I</p> <p>6 don't know the exact headcount.</p> <p>7 Q Do any of them work in an office?</p> <p>8 A They all work remotely, as far as</p> <p>9 I know.</p> <p>10 Q When was the last -- as far as you</p> <p>11 know, every other employee for Skyview works</p> <p>12 remotely?</p> <p>13 A I believe they work remotely, yes. I</p> <p>14 don't know where they work from on a daily basis.</p> <p>15 Q Who owns Skyview?</p> <p>16 A I do.</p> <p>17 Q You are the sole owner of Skyview?</p> <p>18 A Yes.</p> <p>19 Q Does anyone else have any economic</p> <p>20 stake in Skyview?</p> <p>21 A No.</p> <p>22 Q Does any employee of Skyview use office</p> <p>23 space at the same building where NexBank is</p> <p>24 located?</p> <p>25 A I believe that some people come in</p>	<p>19</p> <p>1 Q Well, who made the agreement?</p> <p>2 A The agreement was negotiated by several</p> <p>3 parties and representatives of Skyview, and I</p> <p>4 personally was not involved in those negotiations.</p> <p>5 Q Who was? Who negotiated your comp for</p> <p>6 Skyview?</p> <p>7 A I think it wasn't my comp; it was an</p> <p>8 overall consulting fee and then the comp was set</p> <p>9 by senior people at Skyview, Frank Waterhouse and</p> <p>10 Brian Collins.</p> <p>11 Q As best you know, what is your</p> <p>12 compensation for this year going to --</p> <p>13 A Commensurate --</p> <p>14 Q Strike that. What do you expect your</p> <p>15 compensation to be for the work you do associated</p> <p>16 with Skyview for the year 2021?</p> <p>17 A Commensurate --</p> <p>18 MS. SMITH: Objection, form. Objection</p> <p>19 also as to relevance, as I objected on all of the</p> <p>20 previous depositions. This is beyond the scope of</p> <p>21 the deposition which is due to the facts and</p> <p>22 circumstances to prove or defend the temporary</p> <p>23 and -- motion for temporary injunction and motion</p> <p>24 for protective order and having to do with</p> <p>25 Sentinel.</p>
<p>18</p> <p>1 there to use those facilities on a -- on an ad hoc</p> <p>2 basis, yes.</p> <p>3 Q But you don't believe that anyone has a</p> <p>4 permanent office associated with Skyview in</p> <p>5 that -- in that office?</p> <p>6 A Not that I'm aware of it being</p> <p>7 permanent, no.</p> <p>8 Q Do you have any connection whatsoever</p> <p>9 with NexBank?</p> <p>10 A I am a very --</p> <p>11 -- (overspeaking) --</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 THE WITNESS: I hold shares or entities</p> <p>14 affiliated with me hold a very, very tiny amount</p> <p>15 of shares in NexBank.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Do you have any connection with SSB?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 THE WITNESS: I don't know what SSB is.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Do you have any other employers, other</p> <p>22 than Skyview?</p> <p>23 A No.</p> <p>24 Q What is your compensation from Skyview?</p> <p>25 A I would have to look at the agreement.</p>	<p>20</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q What do you expect your compensation to</p> <p>3 be for the work you do associated with Skyview for</p> <p>4 the year 2021?</p> <p>5 A It would be commiserate to what it</p> <p>6 should have been in the calendar year 2020 at</p> <p>7 Highland Capital Management Company. (inaudible)</p> <p>8 Q So, your compensation was intended to</p> <p>9 reflect what you believed you were entitled to get</p> <p>10 in the last year working for Highland Capital</p> <p>11 Management; correct?</p> <p>12 A I don't know if it was what I believed,</p> <p>13 but I was, again, set by Mr. Collins and</p> <p>14 Mr. Waterhouse.</p> <p>15 Q And what was your compensation for</p> <p>16 Capital -- Highland Capital Management in 2020?</p> <p>17 A I believe it was around \$3 million,</p> <p>18 according to Highland Capital.</p> <p>19 Q Is that all in, bonus, deferred comp,</p> <p>20 equity, any other source of compensation?</p> <p>21 A It would be every source --</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: Sorry Frances, my</p> <p>24 apologies.</p> <p>25 It would be every form of compensation</p>

Conducted on July 29, 2021

<p>21</p> <p>1 as reflected in their award letters from all in of</p> <p>2 everything that you could put as compensation,</p> <p>3 including free lunches and cell phone</p> <p>4 reimbursement and parking and that kind of thing.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q And did you actually receive that</p> <p>7 \$3 million?</p> <p>8 A I did not.</p> <p>9 Q How much of it did you receive,</p> <p>10 roughly?</p> <p>11 A I received just my base salary in 2020.</p> <p>12 Q Which was roughly?</p> <p>13 A \$450,000.</p> <p>14 Q And are you contesting the fact that</p> <p>15 you did not receive roughly \$2.5 million that you</p> <p>16 believe you are entitled to?</p> <p>17 A Yes.</p> <p>18 MS. SMITH: Objection. I'm going to</p> <p>19 object to the extent that it requires you to</p> <p>20 divulge any privileged conversations with your</p> <p>21 attorneys.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Yeah, all -- all of my questions are</p> <p>24 intended to -- are not intended to seek privileged</p> <p>25 communications with your attorneys.</p>	<p>23</p> <p>1 member of the bar?</p> <p>2 A Yes.</p> <p>3 Q Which bar or bars?</p> <p>4 A The Texas bar.</p> <p>5 Q Do you have any other bar memberships,</p> <p>6 other than Texas, state court or Supreme Court?</p> <p>7 A I do not.</p> <p>8 Q Any federal court bar memberships?</p> <p>9 A No.</p> <p>10 Q Where did you go to law school?</p> <p>11 A Pepperdine University.</p> <p>12 Q What year did you graduate?</p> <p>13 A Sorry?</p> <p>14 Q Sorry. What year did you graduate?</p> <p>15 A 2000.</p> <p>16 Q Have you ever had any disciplinary</p> <p>17 actions taken against you since you became a</p> <p>18 lawyer?</p> <p>19 A No.</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Have you ever had any complaints to the</p> <p>23 bar, as far as you know?</p> <p>24 A As far as I know, no.</p> <p>25 Q Do you have any other professional</p>
<p>22</p> <p>1 So when I say contesting, I mean to</p> <p>2 Highland Capital Management in some form or</p> <p>3 another, not what you might be personally saying</p> <p>4 to your attorney in a privilege setting.</p> <p>5 A Without divulging any privileged</p> <p>6 communications, the general answer is yes.</p> <p>7 Q In what form are you contesting that or</p> <p>8 have you -- have you made that -- have you -- in</p> <p>9 what form have you expressed that disagreement?</p> <p>10 Do you have a claim? Have you given notice?</p> <p>11 A I follow the advice of counsel.</p> <p>12 Q Right. But how have you communicated,</p> <p>13 if you have communicated, your challenge to your</p> <p>14 compensation for 2020 to Highland Capital</p> <p>15 Management?</p> <p>16 A Again, without divulging privileged</p> <p>17 communication with counsel, I believe a proof of</p> <p>18 claim has been filed.</p> <p>19 Pardon me?</p> <p>20 Q The question or the answer?</p> <p>21 A I said a proof of claim has been filed.</p> <p>22 Q You're an attorney authorized to</p> <p>23 practice law?</p> <p>24 A Yes.</p> <p>25 Q Are you -- are you currently an active</p>	<p>24</p> <p>1 licenses, other than law degree?</p> <p>2 A I do not.</p> <p>3 Q What does Skyview Group do?</p> <p>4 A Skyview Group advises and consults with</p> <p>5 its clients.</p> <p>6 Q On what matters?</p> <p>7 A Anything that we're contracted to</p> <p>8 consult and advise upon.</p> <p>9 Q What do you -- what -- what area</p> <p>10 generally do you advise and consult on?</p> <p>11 A Middle and back office functions to</p> <p>12 money managers and family offices and related</p> <p>13 parties.</p> <p>14 Q Anything else?</p> <p>15 A No.</p> <p>16 Q And how many clients do you have?</p> <p>17 A I'd have to think of the number of</p> <p>18 entities.</p> <p>19 I'm not certain, but I would say around</p> <p>20 probably -- let me think. I'd have to look at the</p> <p>21 agreements to give you an exact number, but I'd</p> <p>22 say less than a dozen.</p> <p>23 Q And of those, are any completely</p> <p>24 unaffiliated with Jim Dondero, yourself or other</p> <p>25 current or former employees of Highland Capital</p>

Conducted on July 29, 2021

<p>25</p> <p>1 Management?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q How many?</p> <p>6 A Three.</p> <p>7 Q Who are they?</p> <p>8 A There is confidentiality agreements</p> <p>9 with who the clients are. I believe I would</p> <p>10 violate those contracts if I disclose.</p> <p>11 Q We -- we can designate this part of the</p> <p>12 transcript as confidential.</p> <p>13 CONFIDENTIAL</p> <p>14 THE WITNESS: I'd have to look at the</p> <p>15 agreements to tell you the entity names.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Okay, well, we'll ask you to do that,</p> <p>18 then, at the (inaudible)</p> <p>19 You believe there's a confidentiality</p> <p>20 agreement that prohibits you, in response to this</p> <p>21 subpoenaed deposition that was court ordered, from</p> <p>22 disclosing those names, even under the protective</p> <p>23 order in this case?</p> <p>24 MS. SMITH: Objection to form. He's</p> <p>25 already -- he's already answered the question</p>	<p>27</p> <p>1 THE WITNESS: I will -- I will take</p> <p>2 advice from counsel, and, like you said, they can</p> <p>3 be provided under some kind of a confidentiality</p> <p>4 agreement under this deposition. I'm not saying</p> <p>5 that I -- that I don't have to disclose them.</p> <p>6 I'll just take the advice of counsel.</p> <p>7 MR. CLUBOK: Okay. Why don't we go off</p> <p>8 the record.</p> <p>9 -- Off-record discussion --</p> <p>10 THE VIDEOGRAPHER: We're going off the</p> <p>11 record at 10:56 a.m.</p> <p>12 (Recess taken 10:56 a.m. to 11:05 a.m.)</p> <p>13 THE VIDEOGRAPHER: We're going back on</p> <p>14 the record at 11:05 a.m., eastern time.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Okay. Sir, to the -- my understanding</p> <p>17 that Ms. Smith, on your behalf, is going to</p> <p>18 designate this next answer highly confidential and</p> <p>19 myself, the other lawyers reasoning UBS and</p> <p>20 debtor's counsel will all abide by the orders in</p> <p>21 this case with respect to confidentiality. So</p> <p>22 with that said --</p> <p>23 MR. FEINSTEIN: That's agreed.</p> <p>24 MR. CLUBOK: Thank you, Mr. Feinstein.</p> <p>25 BY MR. CLUBOK:</p>
<p>26</p> <p>1 saying --</p> <p>2 MR. CLUBOK: Yeah.</p> <p>3 MS. SMITH: -- he thinks it's</p> <p>4 confidential.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Well, no, let me just be clear. You</p> <p>7 understand you are here testifying under a</p> <p>8 subpoena; correct?</p> <p>9 A Yes.</p> <p>10 Q And you understand that you contested</p> <p>11 that subpoena and litigated in court to try to</p> <p>12 quash this deposition; correct?</p> <p>13 A Correct.</p> <p>14 Q You understand you've been court</p> <p>15 ordered to sit for this deposition; right?</p> <p>16 A Yes.</p> <p>17 Q And you are a lawyer; correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. And you believe that you have a</p> <p>20 binding, private contract with your clients that</p> <p>21 protects you from disclosing them even in this</p> <p>22 deposition setting? As you sit here today, that's</p> <p>23 your legal belief?</p> <p>24 MS. SMITH: Objection, calls for legal</p> <p>25 conclusion.</p>	<p>28</p> <p>1 Q Let's just ask you again. To the bet</p> <p>2 of your ability, can you identify any clients of</p> <p>3 Skyview Group that are not affiliated with</p> <p>4 Mr. Dondero or some other current or former</p> <p>5 employee of Highland Capital Management?</p> <p>6 A Yes.</p> <p>7 MS. SMITH: Objection as to --</p> <p>8 objection as to form, and this is to be marked</p> <p>9 highly confidential.</p> <p>10 You can answer to the extent you know.</p> <p>11 HIGHLY CONFIDENTIAL</p> <p>12 THE WITNESS: The first one I'm aware</p> <p>13 of is a real estate developer in Austin. I do not</p> <p>14 know the entity name. I know generally that they</p> <p>15 have a distressed situation that involves</p> <p>16 litigation. And they do not have any resources</p> <p>17 in-house, so they wanted to retain Skyview and</p> <p>18 have retained Skyview to generally manage</p> <p>19 litigation in a distress workout situation on a</p> <p>20 project -- real estate project in Austin, Texas.</p> <p>21 MR. CLUBOK: Who is the human being</p> <p>22 that you deal with there?</p> <p>23 THE WITNESS: I have never dealt with</p> <p>24 anyone. I was informed by JP Sevilla that they</p> <p>25 had signed an agreement and agreed to a fee</p>

Conducted on July 29, 2021

<p>29</p> <p>1 structure with generally what I just told you. 2 I have zero involvement. 3 BY MR. CLUBOK: 4 Q Okay. Do you know how Skyview got that 5 business? Through some -- 6 A I do not. I know that someone at 7 Skyview was contacted that had a personal 8 relationship with this person, and said "Do you 9 guys have these resources." 10 Q Okay. And the other two clients -- and 11 by the way, you don't know who that person was at 12 Skyview who was in contact -- 13 A I really don't. 14 Q Who are the other two clients that 15 Skyview has that are not affiliated in some way 16 with Mr. Dondero or another Highland current or 17 former employee? 18 MS. SMITH: Objection as to form. 19 Again, this needs to be marked highly 20 confidential. 21 THE WITNESS: A group of retired 22 executives in Dallas have a relationship with Lucy 23 Bannon at Skyview, and they are forming a small VC 24 firm and have zero resources, other than their 25 contacts. And they asked us to structure from a</p>	<p>31</p> <p>1 BY MR. CLUBOK: 2 Q What are your duties and 3 responsibilities at Skyview Group? 4 A To manage the employee base, originates 5 new business, and consult, advise clients. 6 Q Do you -- does Skyview pay any rent or 7 any compensation for the use of offices at the 8 NexBank? 9 MS. SMITH: Objection as to form. 10 THE WITNESS: I don't know. 11 BY MR. CLUBOK: 12 Q Who worked out an agreement, such that 13 you were given office space at NexBank? 14 A I don't know. 15 MS. SMITH: Objection as to form. 16 BY MR. CLUBOK: 17 Q How many people routinely work at those 18 offices? 19 MS. SMITH: Objection, calls for 20 speculation. 21 THE WITNESS: I don't know. 22 BY MR. CLUBOK: 23 Q Have you ever been to those offices? 24 A Yes. 25 Q When was the last time you were there?</p>
<p>30</p> <p>1 tax standpoint and consult on docs for their 2 outside counsel on structuring this VC fund 3 they're trying to put together. 4 BY MR. CLUBOK: 5 Q And they are retired from what company? 6 A I really don't know. 7 Q And what's the third one? 8 A The third one is a Swiss-based 9 commodities broker that was looking for fund 10 accounting work -- fund accounting help and 11 compliance help in opening a U.S. operation. 12 From what I understand, that's under an 13 LOI, and there is not agreement to fees. 14 Q What's the name of that Swiss Bank? 15 A I do not know. 16 Q What's your job title at Skyview? 17 A I believe they -- they have given me 18 the title of president. 19 Q Well, you own the company; right? 20 A Correct. 21 Q So ultimately you make any final 22 decisions about the company? 23 A Correct. 24 MS. SMITH: Objection as to form. 25</p>	<p>32</p> <p>1 A Early June. 2 Q And how often have you gone there since 3 forming Skyview Group? 4 A I think I've been there three times. 5 Q Do you -- is there an office designated 6 for you there? 7 A No. 8 Q Do you plan to remain the sole owner of 9 Skyview Group? 10 A The plan is to distribute equity to 11 senior and employees in general. 12 Q How many employees are slated to get 13 equity under your current planning? 14 MS. SMITH: Objection to form. 15 THE WITNESS: We did not have a -- we 16 do not have a final determination that's being 17 evaluated. 18 BY MR. CLUBOK: 19 Q But it would include Mr. Sevilla; 20 correct? 21 A I would highly assume so. 22 Q And Mr. DiOrio? 23 A I would highly assume so. 24 Q And what about Ms. Irving? 25 A I don't know about Ms. Irving, because</p>

Conducted on July 29, 2021

<p>33</p> <p>1 I don't know what Ms. Irving's ability to work</p> <p>2 looks like in the future.</p> <p>3 Q And what about Mr. Leventon?</p> <p>4 A I would highly assume so.</p> <p>5 Q Highly assume that he would be slated</p> <p>6 to get equity when you figure out a plan for</p> <p>7 distributing equity to employees; correct?</p> <p>8 A I agree.</p> <p>9 Q When did you get the idea to form</p> <p>10 Skyview?</p> <p>11 A Five years ago.</p> <p>12 Q And did you make efforts to make</p> <p>13 Skyview a reality prior to leaving Highland</p> <p>14 Capital Management?</p> <p>15 MS. SMITH: Objection as to form.</p> <p>16 THE WITNESS: Yes. Yes, several times.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q And so you'd been planning to form</p> <p>19 Skyview during the last year of working at</p> <p>20 Highland Capital Management, at least; correct?</p> <p>21 A Yes, for many years before that.</p> <p>22 Q In fact, you incorporated just two days</p> <p>23 after you were fired from Highland Capital</p> <p>24 Management?</p> <p>25 MS. SMITH: Objection as to form.</p>	<p>35</p> <p>1 wouldn't consider it as operating out of NexBank's</p> <p>2 offices.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Have any Skyview employees given the</p> <p>5 NexBank offices as their business address as far</p> <p>6 as you know?</p> <p>7 A I have no idea what they've given as a</p> <p>8 business address.</p> <p>9 Q When you worked out agreements with</p> <p>10 your clients, did you ever include a business</p> <p>11 address for Skyview Group in any of those</p> <p>12 agreements?</p> <p>13 A I haven't been involved in working out</p> <p>14 those agreements.</p> <p>15 Q Has Skyview ever represented to any</p> <p>16 clients that its business address was the NexBank</p> <p>17 office?</p> <p>18 A I--</p> <p>19 MS. SMITH: Objection as to form.</p> <p>20 THE WITNESS: Sorry. I don't know.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q If they did so, that would be false;</p> <p>23 correct?</p> <p>24 MS. SMITH: Objection as to form.</p> <p>25 THE WITNESS: That would be false, in</p>
<p>34</p> <p>1 THE WITNESS: I don't know when the</p> <p>2 entity was incorporated.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Fair to say it was very shortly after</p> <p>5 you were terminated from Highland Capital</p> <p>6 Management?</p> <p>7 A That would be my assumption, yes.</p> <p>8 Q Does Jim Dondero have any sort of</p> <p>9 economic stake in Skyview, in -- directly or</p> <p>10 indirectly?</p> <p>11 A No.</p> <p>12 Q What is Mr. Dondero's relationship to</p> <p>13 Skyview, if any?</p> <p>14 MS. SMITH: Objection as to form.</p> <p>15 THE WITNESS: Mr. Dondero's entity is</p> <p>16 related to Helm (inaudible) or some of the</p> <p>17 contractual clients.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q And Skyview is currently operating out</p> <p>20 of NexBank's offices; correct?</p> <p>21 MS. SMITH: Objection as to form. He's</p> <p>22 already explained that multiple times.</p> <p>23 THE WITNESS: Skyview employees on an</p> <p>24 ad hoc basis work in the NexBank offices.</p> <p>25 I don't know how many, but I certainly</p>	<p>36</p> <p>1 my opinion, yes.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q So if a Skyview employee was</p> <p>4 representing that his or her business address was</p> <p>5 the NexBank office, that would be a false</p> <p>6 statement; correct?</p> <p>7 MS. SMITH: Objection as to form.</p> <p>8 THE WITNESS: To me, it would be</p> <p>9 because I don't consider that where Skyview's</p> <p>10 offices are since a very small number of</p> <p>11 employees, as far as I know, worked there on an ad</p> <p>12 hoc basis.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Do you have any other employment</p> <p>15 currently? And I apologize if I asked that</p> <p>16 already, but...</p> <p>17 A I do not. You already asked, and I do</p> <p>18 not.</p> <p>19 Q Do you have any other source of income,</p> <p>20 other than the income you get from Skyview Group?</p> <p>21 A Well, I have shares in the REITs that</p> <p>22 are granted by the independent board members to</p> <p>23 myself. But I don't know if you would consider</p> <p>24 that income or not.</p> <p>25 Q The REITs that Skyview Group manages?</p>

Conducted on July 29, 2021

<p>37</p> <p>1 A Skyview Group does not manage anything.</p> <p>2 Q All right. Are these REITs that are</p> <p>3 clients of Skyview Group?</p> <p>4 A NexPoint Advisors --</p> <p>5 MS. SMITH: Objection as to form.</p> <p>6 THE WITNESS: Sorry, Frances, I keep</p> <p>7 stepping on you, I apologize.</p> <p>8 NexPoint Advisors is the investment</p> <p>9 manager that manages the REIT on our part.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q And is NexPoint Advisors a part of</p> <p>12 Skyview Group?</p> <p>13 A Yes.</p> <p>14 Q And you are allocated shares in the</p> <p>15 REITs that NexPoint Advisors manages; correct?</p> <p>16 A Yes. And -- by the independent board</p> <p>17 members, as they see fit.</p> <p>18 Q Do you have any other source of income?</p> <p>19 A No.</p> <p>20 Q As a rough percentage, what do you</p> <p>21 expect your Skyview Group income to be in terms of</p> <p>22 your total income as vis-a-vis the REITs?</p> <p>23 MS. SMITH: Objection as to form.</p> <p>24 Again, none of this is relevant to the topics of</p> <p>25 the deposition.</p>	<p>39</p> <p>1 A I believe it's an entity that holds</p> <p>2 claims that the former Highland employees</p> <p>3 potentially have against the debtor.</p> <p>4 Q Did you assign your claim to CPCM?</p> <p>5 A I believe I did.</p> <p>6 Q For what consideration?</p> <p>7 A My employment.</p> <p>8 Q Your employment with whom?</p> <p>9 A My employment with Skyview.</p> <p>10 Q You own Skyview; correct?</p> <p>11 A Correct.</p> <p>12 Q And you had to assign your claim to</p> <p>13 CPCM as -- in order to get a job with a company</p> <p>14 you fully owned?</p> <p>15 A No.</p> <p>16 Q Okay. So was there any consideration</p> <p>17 at all for the assignment of your claim to CPCM?</p> <p>18 MS. SMITH: Objection to form. He's</p> <p>19 already answered that.</p> <p>20 (No response)</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Was there any consideration at all for</p> <p>23 the assignment of your claim to CPCM?</p> <p>24 A I believe it was my employment with</p> <p>25 Skyview.</p>
<p>38</p> <p>1 THE WITNESS: I wouldn't know how to</p> <p>2 calculate that because they could give me zero or</p> <p>3 they could give me ad infinitum shares. But in</p> <p>4 looking historically, it would be less than</p> <p>5 probably -- I don't know, I'd have to do the math,</p> <p>6 but about 10 or 15 percent. But, again, it's not</p> <p>7 necessarily income.</p> <p>8 Q Are there any subsidiaries of Skyview</p> <p>9 Group?</p> <p>10 A I would -- I would have to have</p> <p>11 somebody update the org chart. I know that that's</p> <p>12 been considered, but I don't know what's been</p> <p>13 implemented.</p> <p>14 Q Have you ever heard of an entity called</p> <p>15 Skyview Legal PC?</p> <p>16 A I know that something was being</p> <p>17 discussed about a legal PC. I don't know what the</p> <p>18 gentlemen working on it decided to name it or if</p> <p>19 it's been implemented.</p> <p>20 Q Who's the gentlemen working on it?</p> <p>21 A I believe JP Seery and Isaac Leventon</p> <p>22 were the people in charge of that.</p> <p>23 Q Do you know what CPCM LLC is?</p> <p>24 A I do.</p> <p>25 Q What is it?</p>	<p>40</p> <p>1 Q But that employment you had the right</p> <p>2 to give yourself, regardless of whether or not you</p> <p>3 assigned your claim to CPCM as a hundred percent</p> <p>4 owner of Skyview; correct?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Theoretically, yes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Not just theoretically, actually, as</p> <p>9 far as you know.</p> <p>10 As far as you understand, owning a</p> <p>11 company a hundred percent, you certainly had the</p> <p>12 right to employ yourself in any capacity you</p> <p>13 chose; correct?</p> <p>14 A Yeah, I would agree with that.</p> <p>15 Q And is there any other consideration</p> <p>16 at all that you could identify, even a peppercorn,</p> <p>17 for the transfer or assignment of your claims to</p> <p>18 CPCM?</p> <p>19 A I don't remember the agreements in</p> <p>20 detail. I'd have to look at the agreements</p> <p>21 relating to (inaudible) to see what (inaudible)</p> <p>22 was considered.</p> <p>23 Q But as you sit here today, you are not</p> <p>24 aware of any; correct?</p> <p>25 A Not that I can recall, but there may be</p>

Conducted on July 29, 2021

<p style="text-align: right;">41</p> <p>1 some.</p> <p>2 Q Well, we're going to put up Exhibit 1.</p> <p>3 By the way, do you have exhibits in front of you?</p> <p>4 A I have a folder of (inaudible) yes,</p> <p>5 sir, I do.</p> <p>6 Q Okay. Take a look at Exhibit 1.</p> <p>7 A Give me a second to find it.</p> <p>8 Q Sorry. It's -- I said Exhibit 1.</p> <p>9 It is Tab actually 1, and it is going</p> <p>10 to be Exhibit 86. I apologize.</p> <p>11 (Deposition Exhibit 86 was marked for</p> <p>12 identification.)</p> <p>13 THE WITNESS: Exhibit 86. Okay.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q You may or may not have that one in</p> <p>16 your --</p> <p>17 A I believe that they end at 84.</p> <p>18 Q Okay. So we'll put up tab -- or</p> <p>19 Exhibit 86 on the screen.</p> <p>20 Exhibit 86 is a Notice of Transfer of</p> <p>21 Claim Other Than for Security by Scott Ellington</p> <p>22 to CPCM.</p> <p>23 A Okay.</p> <p>24 MS. SMITH: Andy, since we are not</p> <p>25 copied on the exhibits, could someone please load</p>	<p style="text-align: right;">43</p> <p>1 A I see that written on the document,</p> <p>2 yes.</p> <p>3 Q And on page 2, it says, "For value</p> <p>4 received, the adequacy and sufficiency of which</p> <p>5 are hereby acknowledged, Scott Ellington has</p> <p>6 unconditionally and irrevocably sold, transferred,</p> <p>7 assigned to CPCM," et cetera, et cetera.</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q And as far as you sit here today, the</p> <p>11 only consideration you can think of is the</p> <p>12 employment you gave yourself at Skyview Group;</p> <p>13 correct?</p> <p>14 A And, again, I'd have to see the --</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 THE WITNESS: I'd have to see all</p> <p>17 the -- the related documents. But that's --</p> <p>18 that's what I consider the consideration without</p> <p>19 looking at the documents.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q What documents would you have to look</p> <p>22 at?</p> <p>23 A I don't know what's out there related</p> <p>24 to this. I'm being shown two pages. I wasn't</p> <p>25 involved in negotiation or drafting of these. I</p>
<p style="text-align: right;">42</p> <p>1 them into the chat?</p> <p>2 MR. CLUBOK: Yes. We'll start to make</p> <p>3 them --</p> <p>4 Shannon, maybe you can circulate them</p> <p>5 at the same time that we put them up on the</p> <p>6 screen.</p> <p>7 MS. McLAUGHLIN: Certainly.</p> <p>8 MR. CLUBOK: Thank you.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And Mr. Ellington, can you --</p> <p>11 MR. CLUBOK: Let's see.</p> <p>12 Nate, we got it up there?</p> <p>13 REMOTE TECHNICIAN: Yes, I will -- I</p> <p>14 will circulate the document in chat. Or actually,</p> <p>15 Shannon has already done --</p> <p>16 MR. CLUBOK: Can you put the document</p> <p>17 on the screen, or maybe it's up there and I just</p> <p>18 don't see it.</p> <p>19 REMOTE TECHNICIAN: Yes. Thank you,</p> <p>20 one moment.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q So this is the -- do you recognize</p> <p>23 Exhibit 86 as the Notice of Transfer of Claim</p> <p>24 Other Than for Security with respect to yourself,</p> <p>25 as the transferor and CPCM as the transferee?</p>	<p style="text-align: right;">44</p> <p>1 don't know what else is relatable.</p> <p>2 Q Were you involved in any negotiation of</p> <p>3 the transfer of claims to CPCM by any -- any</p> <p>4 individual?</p> <p>5 A No.</p> <p>6 Q Were you involved at all in the</p> <p>7 approval of those transfers?</p> <p>8 A No.</p> <p>9 Q Did you have any involvement at all?</p> <p>10 A None.</p> <p>11 Q You just -- who told you about it?</p> <p>12 A I believe counsel.</p> <p>13 Q You learned about the transfers through</p> <p>14 counsel and no other -- no other source?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: Yeah. Yes, at the time I</p> <p>17 was under a restraining order, so I had very</p> <p>18 limited communication with anyone, but counsel.</p> <p>19 Q Do you know whose idea it was to</p> <p>20 transfer the claims to the CPCM?</p> <p>21 MS. SMITH: Objection.</p> <p>22 THE WITNESS: No, I don't.</p> <p>23 MS. SMITH: Do not answer to the extent</p> <p>24 it calls for privileged information.</p> <p>25 THE WITNESS: I do not know.</p>

Conducted on July 29, 2021

<p>45</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever discuss it with anyone</p> <p>3 other than your counsel?</p> <p>4 A No.</p> <p>5 Q CPCM is wholly owned by Skyview Group?</p> <p>6 A I'd have to look at an org chart or</p> <p>7 related documents. I'm not certain, but that's my</p> <p>8 understanding.</p> <p>9 Q So you have all the economic interest</p> <p>10 in CPCM; correct?</p> <p>11 A Again, I'd have to look at how it was</p> <p>12 structured.</p> <p>13 I don't -- I just know anecdotally what</p> <p>14 I was told.</p> <p>15 Q As far as you know sitting here today,</p> <p>16 can you -- are you aware of anyone else who has</p> <p>17 any other economic interest in CPCM other than</p> <p>18 you?</p> <p>19 A No, I think it's a wholly-owned sub of</p> <p>20 Skyview, but, again, I'd have to look at the</p> <p>21 documents to be certain.</p> <p>22 Q CPCM is represented by Ross and Smith</p> <p>23 and Baker MacKenzie.</p> <p>24 A That's my understanding, yes.</p> <p>25 Q And these are the attorneys who are</p>	<p>47</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Are you aware of anyone else they</p> <p>3 represent?</p> <p>4 A I believe they represent Mr. Waterhouse</p> <p>5 and potentially Mr. Collins. I believe them or a</p> <p>6 subset of them represents Skyview as an entity,</p> <p>7 but I don't know that for a fact as I haven't seen</p> <p>8 those engagement letters with my own eyes.</p> <p>9 Q Who hired them?</p> <p>10 A Who hired whom?</p> <p>11 Q Who hired Ross and Smith to represent</p> <p>12 you and your colleagues?</p> <p>13 A Well, I personally hired them to</p> <p>14 represent me. I would assume each individual</p> <p>15 hired them on their own behalf.</p> <p>16 Q And when you hired them, did you -- you</p> <p>17 worked out no payment arrangements with them; you</p> <p>18 just hired them and didn't have any compensation</p> <p>19 worked out?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: The payor of the bills,</p> <p>22 as far as I understand, are through various</p> <p>23 indemnities and insurance policies with entities</p> <p>24 and insurers. But, again, that's not -- I'm not</p> <p>25 the person that processes or pays the bills, so I</p>
<p>46</p> <p>1 sitting here today with you during this</p> <p>2 deposition?</p> <p>3 A Yes.</p> <p>4 Q And Mr. Sevilla, Mr. Leventon,</p> <p>5 Mr. DiOrio and Ms. Lucas/Irving also shared that</p> <p>6 same set of counsel; correct?</p> <p>7 A That's my understanding, yes.</p> <p>8 Q Who is paying the legal fees for Ross</p> <p>9 and Smith?</p> <p>10 A I'm not certain.</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q You have -- Ross and Smith, Ms. Smith</p> <p>14 has been here object -- making these objections.</p> <p>15 She has got a colleague of hers also sitting on</p> <p>16 this deposition, and you have no idea who's paying</p> <p>17 their bills?</p> <p>18 A No, I don't.</p> <p>19 Q Who else do they represent, other than</p> <p>20 you, CPCM, Mr. Sevilla, Mr. Leventon and Mr.</p> <p>21 DiOrio and Ms. Irving?</p> <p>22 A No, I don't.</p> <p>23 MS. SMITH: Objection -- objection,</p> <p>24 calls for speculation and potentially privileged</p> <p>25 communications.</p>	<p>48</p> <p>1 don't know how they're being paid.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q When you -- when you said you were</p> <p>4 going to work with Ms. Smith, did you discuss</p> <p>5 compensation in any way of who would pay for it?</p> <p>6 MS. SMITH: Objection, privileged.</p> <p>7 THE WITNESS: Yeah, I think that's</p> <p>8 getting into privileged communications.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Do you have any idea who is paying</p> <p>11 Ms. Smith's bills to represent you and your</p> <p>12 colleagues?</p> <p>13 A Currently, no.</p> <p>14 Q Did you ever have any idea as to who</p> <p>15 was going to be paying Ms. Smith's bills to</p> <p>16 represent you, your colleagues and the company you</p> <p>17 100 percent own?</p> <p>18 A Yes.</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q And who -- and what was your</p> <p>22 understanding?</p> <p>23 A At the inception, I believe it was an</p> <p>24 entity called Gov Re.</p> <p>25 Q So when you first hired Ms. Smith, you</p>

Conducted on July 29, 2021

<p>1 believe that Gov Re would pay all of her legal 2 fees for representing you and your colleagues and 3 Skyview Group? 4 A That's my understanding, but I don't 5 have any transparency in the operations of Gov Re. 6 Q Who runs Gov Re? 7 A I don't know. 8 Q What connection -- 9 -- (overspeaking) -- 10 A Bermuda Directors (?) would be my 11 assumption. 12 Q What connection do you have with Gov 13 Re? 14 A None. 15 Q What made you think that Gov Re would 16 pay the bills for you and all your colleagues and 17 your company? 18 MS. SMITH: Objection to form. 19 THE WITNESS: Because they had an 20 insurance policy that covered us. 21 BY MR. CLUBOK: 22 Q Through what entity? 23 A I don't know. 24 Q Who is Mr. Collins, I think you 25 mentioned?</p>	<p>1 A No. 2 Q All the -- who hired Baker MacKenzie, 3 as far as you know? 4 A For whom as a client? 5 Q For you. 6 A Me. 7 Q Who hired Baker MacKenzie for all the 8 other employees? 9 MS. SMITH: Objection as to form. 10 THE WITNESS: I assume them as 11 individuals? 12 BY MR. CLUBOK: 13 Q Yeah, who hired Baker MacKenzie for 14 your other -- well, strike that. 15 Is it fair to say that Baker MacKenzie 16 represents all the same entities and individuals 17 that we identified as being represented by Ross 18 Smith, as far as you know? 19 A Oh, I don't -- I don't know how that's 20 broken down. 21 Q Well, does Baker MacKenzie represent 22 Skyview Group and CPCM? 23 A I believe so. 24 Q Does Baker MacKenzie represent Mr. 25 Sevilla, Mr. Leventon, Mr. DiOrio and Ms. Irving?</p>
<p>1 A Brian Collins, he's the chief 2 administrative officer of Skyview. 3 Q Was he a former Highland Capital 4 Management employee? 5 A He was. 6 Q Was he also terminated on or about the 7 same time you were? 8 MS. SMITH: Objection to form. 9 THE WITNESS: I believe he was 10 terminated with the rest of the employees about a 11 month later. 12 BY MR. CLUBOK: 13 Q When you were terminated, were you told 14 why you were being terminated from HCM? 15 A Yes. 16 Q What is -- were you told? 17 A I was told by Mr. Seery that I had 18 worked against the estate. 19 Q Anything else? 20 A Not that I recall. 21 Q What did you say in response? 22 A "I don't know what you're talking 23 about. Can you please tell me -- give me an 24 example"? And he said "No." 25 Q Anything else?</p>	<p>1 A That's my understanding, but I have not 2 seen those engagement letters. 3 Q And who arranged for them to represent 4 all of those individuals other than -- 5 MS. SMITH: Objection -- objection 6 speculation. 7 THE WITNESS: I would assume them as 8 individuals. 9 BY MR. CLUBOK: 10 Q And -- and is was paying Baker 11 MacKenzie's bills? 12 A I don't know at this point. 13 Q Was it originally your anticipation 14 that Gov Re would pay Baker MacKenzie's bills as 15 well? 16 A That was my understanding. 17 Q Has anyone from Gov Re ever 18 communicated to you in words or substance that 19 they would not be paying the legal fees incurred 20 by hiring Baker MacKenzie or Ross Smith? 21 A No. 22 Q Who handles making sure that those 23 firms get paid? 24 A It's -- 25 MS. SMITH: Objection.</p>

Conducted on July 29, 2021

<p>53</p> <p>1 THE WITNESS: It's an assumption, 2 Mr. Waterhouse. 3 BY MR. CLUBOK: 4 Q Did you discuss with any individual 5 other than your -- the lawyers assigning any 6 claims to Skyview Group? 7 -- (overspeaking) -- 8 A Assigning -- 9 Q Excuse me -- (overspeaking) -- 10 assigning things with CPCM? 11 A No, only discussed with counsel. 12 Q When were you first employed by 13 Highland Capital Management? 14 A May of 2007. 15 Q How did you start working for Highland 16 Capital Management? 17 A I was in the syndications group, the 18 real estate group of Wells Fargo. Highland bought 19 into those syndicated levels, and they asked me to 20 come interview to work in-house with them. 21 Q Prior to Wells Fargo, where did you 22 work? 23 A Countrywide Home Loans. 24 Q Doing what? 25 A In the syndications group, and in the</p>	<p>55</p> <p>1 Countrywide? 2 A It would have been about 2002, I 3 believe. 4 Q Okay. Going back to your employment 5 with HCM, when you first started there, what was 6 your job title? 7 A In-house counsel. 8 Q And eventually you became the general 9 counsel? 10 A Yes. 11 Q When was that? 12 A I'd have to go back and look. I don't 13 recall. But I believe it was around 2010. 14 Q So, after the -- you remember that UBS 15 filed a lawsuit against Highland in roughly 16 2000 -- in early 2009? 17 A Yes. 18 MS. SMITH: Objection -- objection. 19 Before you start this line of questioning, I want 20 to caution you, Mr. Ellington, not to disclose any 21 privileged communications with counsel that you 22 might have gotten in your role as Highland Capital 23 GC, unless the debtor -- or I will rely on the 24 debtor to assert privilege, if needed. 25 MR. FEINSTEIN: Well, yes. It is Rob</p>
<p>54</p> <p>1 -- ultimately in the bankruptcy group. 2 Q Doing legal work? 3 A Yes. 4 Q Prior to -- sorry, Countrywide, you 5 said? 6 A Yeah, Countrywide Home Loans. 7 Q What did you do prior to working at 8 Countrywide? 9 A I worked at a talent agency in Los 10 Angeles. 11 Q In what capacity? 12 A It was an assistant. 13 Q What year? 14 A The year would have been starting in 15 2000. 16 Q So when did you graduate law school? 17 A 2000. 18 Q And your first job was as an assistant 19 at a talent agency. 20 A Yes. 21 Q Why did you do that? 22 A Because to get into the top talent 23 agencies, you had to have a law degree with an 24 MBA, and I wanted to work in the film industry. 25 Q Okay. And when did you move to</p>	<p>56</p> <p>1 Feinstein. So that privilege does belong to the 2 debtor and the extent to which we assert the 3 privilege, you will know on a question-by-question 4 basis. 5 If you don't hear an objection from us, 6 it's because we determined either the privilege 7 doesn't apply or one of the recognized exceptions 8 apply, like the crime fraud exception, or that 9 we're waiving it. But in all events, we'll assert 10 the privilege as and if we see fit; otherwise, 11 counsel should feel free to answer the question -- 12 excuse me, the witness should feel free to answer 13 the questions. 14 THE WITNESS: Mr. Feinstein, thank you. 15 BY MR. CLUBOK: 16 Q Do you understand? 17 A Yes. 18 Q Do you understand the consent? 19 A Yes. 20 Q So you became general counsel after UBS 21 filed its lawsuit against Highland in New York? 22 A Yes. 23 Q And in addition to being general 24 counsel, were you a partner in Highland Capital 25 Management?</p>

Conducted on July 29, 2021

<p>57</p> <p>1 A Ultimately, yes.</p> <p>2 Q When was that?</p> <p>3 A I don't remember the date.</p> <p>4 Q Roughly?</p> <p>5 A I want to say around '13, maybe '12 --</p> <p>6 2012 or 2013.</p> <p>7 Q Okay. And you remained a partner until</p> <p>8 the bankruptcy?</p> <p>9 A Until my termination, yes.</p> <p>10 Q Until your termination.</p> <p>11 And did you remain general counsel</p> <p>12 until your termination?</p> <p>13 A Yes.</p> <p>14 Q Who did you report to at Highland?</p> <p>15 A Jim Dondero.</p> <p>16 Q Where did you work?</p> <p>17 A In the offices at the Crescent.</p> <p>18 Q Were you physically near Jim Dondero,</p> <p>19 your office?</p> <p>20 A No, I was not physically near Dondero.</p> <p>21 Q Same floor?</p> <p>22 A Same floor, yes. There was only one</p> <p>23 floor.</p> <p>24 Q And you had your own private office?</p> <p>25 A I did.</p>	<p>59</p> <p>1 A Reported to Mr. Surgent.</p> <p>2 Q When he was the chief compliance</p> <p>3 officer?</p> <p>4 A Yeah, they -- they were in</p> <p>5 compliance-based roles at the end of my tenure.</p> <p>6 Q When Mr. Surgent was the chief</p> <p>7 compliance officer, who did he report to?</p> <p>8 A Jim Dondero.</p> <p>9 Q Was there anyone else in the Highland</p> <p>10 Capital Management legal department, other than</p> <p>11 the names you've identified?</p> <p>12 A Sarah Bell, my executive assistant,</p> <p>13 reported to me. I believe she may have reported</p> <p>14 to Mr. Collins. I believe she reported to</p> <p>15 Mr. Collins, technically.</p> <p>16 Q Anyone else in the Highland Capital</p> <p>17 Management legal department?</p> <p>18 A Not that I can recall.</p> <p>19 Q Prior to becoming general counsel, were</p> <p>20 you the assistant general counsel?</p> <p>21 A I was.</p> <p>22 Q And did you ever hold a title of</p> <p>23 portfolio manager?</p> <p>24 A I did.</p> <p>25 Q When?</p>
<p>58</p> <p>1 Q And you spoke with Mr. Dondero on an</p> <p>2 average of a daily basis?</p> <p>3 A Yes.</p> <p>4 MS. SMITH: Objection as to form.</p> <p>5 THE WITNESS: I'm sorry, Frances.</p> <p>6 Yes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Did anyone report to you directly at</p> <p>9 Highland Capital Management?</p> <p>10 A Yes.</p> <p>11 Q Who?</p> <p>12 A I'll try my best to give an exhaustive</p> <p>13 least.</p> <p>14 Thomas certainly reported to me in his</p> <p>15 deputy general counsel role, but not in his chief</p> <p>16 compliance officer role.</p> <p>17 JP Sevilla, Ms. Irving, Mr. DiOrion,</p> <p>18 Ms. Vitiello, Ms. Leventon -- I mean, Mr.</p> <p>19 Leventon, sorry. I think that was the direct</p> <p>20 reports upon determination, but at different</p> <p>21 times, it's been various other people.</p> <p>22 Q What about Lauren Thedford?</p> <p>23 A She did not report to me. She reported</p> <p>24 to Mr. Surgent.</p> <p>25 Q And what about Jason Post?</p>	<p>60</p> <p>1 A I'd have to go back and think about</p> <p>2 that, Mr. Clubok. I apologize. But it was, I</p> <p>3 want to say, '08 and '09, maybe in '10.</p> <p>4 Q When you communicated with Mr. Dondero,</p> <p>5 is it fair to say you -- you communicated</p> <p>6 verbally, like in-person?</p> <p>7 A I communicated verbally in-person as</p> <p>8 well as telephonically.</p> <p>9 Q How about by text message?</p> <p>10 A Very limited.</p> <p>11 Q When you would text message with</p> <p>12 Mr. Dondero, which phone would you use?</p> <p>13 A 214-649-5475.</p> <p>14 Q Did you use any other messenger systems</p> <p>15 to communicate with Mr. Dondero, like --</p> <p>16 A No.</p> <p>17 Q Did you ever use signal or What's App</p> <p>18 or any other text messaging?</p> <p>19 A No, I exclusively communicated with</p> <p>20 Mr. Dondero on iMessage.</p> <p>21 Q iMessage on your iPhone?</p> <p>22 A Yes.</p> <p>23 Q Did he have an iPhone?</p> <p>24 A Yes.</p> <p>25 MS. SMITH: Objection, form.</p>

Conducted on July 29, 2021

<p>61</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever email with him?</p> <p>3 A Yeah, there was -- there was emails</p> <p>4 with Mr. Dondero.</p> <p>5 Q Who set your compensation at HCM?</p> <p>6 A I believe there was a compensation</p> <p>7 committee, but the ultimate arbiter was</p> <p>8 Mr. Dondero.</p> <p>9 Q Did you have responsibilities for any</p> <p>10 other HCM-affiliated or managed entities while you</p> <p>11 were the general counsel at Highland Capital</p> <p>12 Management?</p> <p>13 A I believe that I was a managing member</p> <p>14 or officers of various entities at different</p> <p>15 times.</p> <p>16 Q Did any of those entities separately</p> <p>17 compensate you for the work you did?</p> <p>18 A No.</p> <p>19 Q So all of the compensation you received</p> <p>20 came -- even if you did it on behalf of some of</p> <p>21 these other entities came directly from Highland</p> <p>22 Capital Management LP?</p> <p>23 A Yes.</p> <p>24 Q Was there ever a time when one of</p> <p>25 Highland's affiliated or managed funds paid you</p>	<p>63</p> <p>1 Q So I can get it clean for the record.</p> <p>2 And when you say -- it's like if I said</p> <p>3 it's not raining range outside and you said "No,"</p> <p>4 you're meaning yes, it's not raining, but it says</p> <p>5 no. So, anyway, I'm just going to ask you that</p> <p>6 again just not to make you repeat, but just so you</p> <p>7 can answer. Whatever your answer is I don't care.</p> <p>8 I just want to --</p> <p>9 A Yes, I understand that.</p> <p>10 Q Okay. So is it true that other than</p> <p>11 the NexPoint advisor-managed REITs in which you</p> <p>12 were granted shares, there was never a Highland</p> <p>13 Capital Management affiliate or managed fund that</p> <p>14 paid you directly while you were working at HCM;</p> <p>15 correct?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: That is my understanding,</p> <p>18 yes.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q When you were at Highland, you used</p> <p>21 email addresses that ended in "hcmlp.com" and</p> <p>22 "highlandcapital.com?"</p> <p>23 A Yes.</p> <p>24 Q Did you ever use any other email to</p> <p>25 conduct any business for Highland or any of its</p>
<p>62</p> <p>1 directly?</p> <p>2 A Again, only with --</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: Again, only with the</p> <p>5 exception of the NexPoint Advisor-managed REITs</p> <p>6 when I was granted shares.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q So other than NexPoint Advisor-managed</p> <p>9 REITs in which you were granted shares, there was</p> <p>10 never a Highland Capital Management affiliate or</p> <p>11 managed fund that paid you directly; is that</p> <p>12 correct?</p> <p>13 A That paid me directly, no.</p> <p>14 Q Is that correct?</p> <p>15 A That's what -- that's my belief, yes.</p> <p>16 Q And by the way, that was an example of,</p> <p>17 I think, a double negative.</p> <p>18 The only reason I reiterated that</p> <p>19 question is if I say -- if you say -- I said was</p> <p>20 there -- I said was there never.</p> <p>21 I put in a negative. And you said</p> <p>22 "No," and so it became a little confusing. So</p> <p>23 I am just going to ask that question again without</p> <p>24 the negative.</p> <p>25 A Please.</p>	<p>64</p> <p>1 affiliates?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: For Highland or its</p> <p>4 affiliates, no.</p> <p>5 MR. CLUBOK: I'm sorry. What was the</p> <p>6 form objection to that, Ms. Smith?</p> <p>7 MS. SMITH: That was a -- that was a</p> <p>8 compound question.</p> <p>9 MR. CLUBOK: Okay. I'm trying to --</p> <p>10 one second here. My wife just nicely brought me a</p> <p>11 cup of coffee.</p> <p>12 MS. SMITH: I wish I had someone</p> <p>13 bringing me coffee.</p> <p>14 MR. CLUBOK: It's very nice. You guys</p> <p>15 may regret that I have coffee. I don't know.</p> <p>16 Sorry, let me back to it.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q When you conducted business for</p> <p>19 Highland Capital Management, did you ever use any</p> <p>20 other email, other than the HCMLP.com or the</p> <p>21 HighlandCapital.com?</p> <p>22 A No, not for business related to</p> <p>23 Highland Capital Management.</p> <p>24 Q While you were employed at Highland</p> <p>25 Capital Management, did you ever use any email for</p>

Conducted on July 29, 2021

<p>65</p> <p>1 any other business-related purpose?</p> <p>2 A Yes.</p> <p>3 Q And what emails -- what email or emails</p> <p>4 were that?</p> <p>5 A WWWSA -- or my name, sorry,</p> <p>6 "sasmgt.com."</p> <p>7 Q Under what circumstances would you use</p> <p>8 the sasmanagement.com email?</p> <p>9 A In things related to SAS or Sentinel or</p> <p>10 its related entities.</p> <p>11 Q Why?</p> <p>12 A Because we were instructed by</p> <p>13 compliance that all aspects of those businesses</p> <p>14 should be conducted on their own servers and</p> <p>15 completely separate from Highland Capital</p> <p>16 Management LP.</p> <p>17 Q Okay, other than that email address and</p> <p>18 the Highland-related email addresses that you've</p> <p>19 already mentioned, was there ever any other email</p> <p>20 that you used for any business purposes while you</p> <p>21 were employed at Highland Capital Management?</p> <p>22 A Not that I recall.</p> <p>23 Q Did you ever -- what is Blackland</p> <p>24 Associates?</p> <p>25 A Consulting firm.</p>	<p>67</p> <p>1 A OG Ventures? No.</p> <p>2 Q Were you surprised when you were hired</p> <p>3 from Highland Capital Management?</p> <p>4 A Yes.</p> <p>5 MS. SMITH: Objection as to form.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Did you have a chance to clean out your</p> <p>8 office?</p> <p>9 A No.</p> <p>10 Q Have you performed any services for any</p> <p>11 HCM-related entities since your termination?</p> <p>12 A Other than in my employment with</p> <p>13 Skyview, but I don't know that it's considered</p> <p>14 related anymore due to the bankruptcy.</p> <p>15 Q When was the last time you spoke with</p> <p>16 Jim Dondero?</p> <p>17 A About 32 days ago.</p> <p>18 Q And prior to that, how frequently were</p> <p>19 you speaking to him?</p> <p>20 A Once every couple to three days.</p> <p>21 Q When's the last time you spoke with</p> <p>22 Isaac Leventon?</p> <p>23 A About 35 days ago.</p> <p>24 Q And prior to that, how often did you</p> <p>25 speak with Mr. Leventon?</p>
<p>66</p> <p>1 Q When was that -- what -- does that have</p> <p>2 any connection with Highland Capital Management?</p> <p>3 A None.</p> <p>4 Q Did you ever use emails with the</p> <p>5 blacklandassociates.com?</p> <p>6 A No.</p> <p>7 Q Did you ever -- what's your sister's</p> <p>8 name.</p> <p>9 A I have two sisters.</p> <p>10 Q What are their names?</p> <p>11 A Sharon Ellington and Marcia Maslow.</p> <p>12 Q Have either of those individuals ever</p> <p>13 done any work in connection with Highland Capital</p> <p>14 Management?</p> <p>15 A My sister Marcia assisted on some IT</p> <p>16 projects.</p> <p>17 Q Any other work that either of them ever</p> <p>18 did in connection with your work at Highland</p> <p>19 Capital Management?</p> <p>20 A My -- my other sister is an estate</p> <p>21 planning attorney, and she's helping me with my</p> <p>22 personal finances.</p> <p>23 Q Anything else?</p> <p>24 A Not that I -- not that I recall.</p> <p>25 Q Have you ever heard of OG Ventures?</p>	<p>68</p> <p>1 A Maybe a couple of times a week.</p> <p>2 Q When's the last time you spoke with</p> <p>3 JP Sevilla?</p> <p>4 A Close to 40 days ago, I believe.</p> <p>5 Q And how often did you speak to him</p> <p>6 prior to that?</p> <p>7 A A couple of times a week.</p> <p>8 Q When was the last time you spoke with</p> <p>9 Matt DiOrio?</p> <p>10 A I would say about 30 days ago.</p> <p>11 Q How often did you speak with him prior</p> <p>12 to that?</p> <p>13 A Two or three times a week.</p> <p>14 Q When was the last time you spoke with</p> <p>15 Ms. Irving?</p> <p>16 A Two plus months ago.</p> <p>17 Q What did Ms. Irving do for</p> <p>18 Skyview Group?</p> <p>19 A Ms. Irving has never worked for</p> <p>20 Skyview Group because she is on medical leave.</p> <p>21 Q Is Skyview Group paying her any</p> <p>22 compensation at all for 20 -- for -- strike that.</p> <p>23 Has Skyview Group agreed to pay her any</p> <p>24 compensation at all for 2021?</p> <p>25 A I have no idea.</p>

Conducted on July 29, 2021

<p>69</p> <p>1 Q So Ms. Irving is currently not employed 2 by Skyview Group; is that correct? 3 MS. SMITH: Objection. Objection to 4 form. That misstates what he said. 5 THE WITNESS: I don't know the 6 arrangement. I don't know how that FMLA works. I 7 just -- I just don't know enough about it. 8 That's handled by Mr. Collins. 9 BY MR. CLUBOK: 10 Q Did you speak with -- so you've been in 11 Africa? You were on an extended trip to Africa 12 for about a month or so? 13 A Yeah, 26 days. 14 Q And when did you return? 15 A I returned about 30 hours ago, 36 hours 16 ago, something like that. 17 Q During the time -- who were you in 18 Africa with? 19 A My father. 20 Q Just you and your father, that's it? 21 A Some of my family -- 22 MS. SMITH: Objection to form. 23 THE WITNESS: A subset of my family 24 members joined us for the -- for about ten days on 25 the beginning.</p>	<p>71</p> <p>1 Q When did you find out that you were 2 going to be deposed today? 3 A I found out I was going to be deposed 4 today, I believe, before I left. 5 My dad had a -- about a 6 ten-generational iPad that I would try to get 7 emails on, and I think I received some calendar 8 notices when I had Wi-Fi. 9 Q I'm sorry, you say that you found out 10 about today's deposition before you left for your 11 Africa trip? 12 A No. I said I knew I was going to be 13 deposed. I didn't know the date. 14 I was able to get some calendar invites 15 through a personal email account off my dad's 16 iPad, but it was incredibly difficult. 17 Q So you got a calendar invite for 18 today's deposition and no other information at all 19 about today's deposition before you got back to 20 the US? 21 A Literally none. 22 Q Did you -- how did you spend yesterday? 23 A How did I spend yesterday? 24 MS. SMITH: Objection to form. 25 THE WITNESS: I went to AT&T to try to</p>
<p>70</p> <p>1 BY MR. CLUBOK: 2 Q And during that time, other than your 3 attorney, did you communicate with anyone in the 4 U.S.? 5 A I don't believe so. And I didn't 6 communicate with my attorneys either, that I 7 recall. 8 Q You didn't communicate with your 9 attorneys at all -- I don't want to get into the 10 substance, but you didn't communicate with your 11 attorneys at all during the time you were in 12 Africa; is that true? 13 A No, someone decided to politely -- I -- 14 when I signed up for the international phone plan, 15 what I was told by AT&T is that the email went to 16 my former executive admin at Highland and someone 17 at (inaudible) someone informed them they're to 18 turn off my phones. 19 Q So, you had absolutely no communication 20 with your attorneys during the time you were in 21 Africa; is that true? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I don't believe I had any 24 at all. 25 BY MR. CLUBOK:</p>	<p>72</p> <p>1 get my phones turned on, and then I had a 2 discussion with counsel yesterday afternoon. 3 BY MR. CLUBOK: 4 Q Did you do anything else related to 5 this case yesterday? 6 A Nothing. 7 Q Do you have -- you have files of 8 documents that you took from Highland Capital? 9 A No, I didn't. 10 MS. SMITH: Objection to form. 11 BY MR. CLUBOK: 12 Q Strike that. You -- you have documents 13 in your possession that are Highland Capital or 14 related documents; correct? 15 A That is -- 16 MS. SMITH: Objection to form. 17 THE WITNESS: That is incorrect. 18 BY MR. CLUBOK: 19 Q Do you have any boxes that you 20 needed -- strike that. 21 Do you have any boxes in your 22 possession that potentially contain information 23 responsive to the document subpoena we issued in 24 this case? 25 MS. SMITH: Objection.</p>

Conducted on July 29, 2021

<p>73</p> <p>1 THE WITNESS: No, I have moving boxes</p> <p>2 where my former partner was packed up, and I had</p> <p>3 personal notebooks that I searched through to see</p> <p>4 if there is anything relevant to this case. And I</p> <p>5 don't have any documents that are Highland Capital</p> <p>6 Managements or otherwise else.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q But you didn't search those notebooks</p> <p>9 prior to leaving for Africa; correct?</p> <p>10 A No, I did not.</p> <p>11 Q And you have not searched them since</p> <p>12 you got back; correct?</p> <p>13 A That is wrong.</p> <p>14 Q When did you search them?</p> <p>15 A The day I got back, I searched through</p> <p>16 the boxes until 3:00 o'clock in the morning until</p> <p>17 I found them.</p> <p>18 Q And you found the notebooks, and they</p> <p>19 had absolutely nothing to do with anything</p> <p>20 requested in the subpoena; is that correct?</p> <p>21 A No, there was absolutely nothing.</p> <p>22 The notebooks were only a few months</p> <p>23 old. I mean, they mostly went back to December.</p> <p>24 Q Do you currently sit on the board of</p> <p>25 any companies?</p>	<p>75</p> <p>1 Q Have you ever served as a direct -- as</p> <p>2 a director of any other entity related in any way</p> <p>3 to Highland Capital Management or Jim Dondero?</p> <p>4 A Not that I can recall.</p> <p>5 Q And so other than this one instance</p> <p>6 that you've described as a short stint, you've</p> <p>7 never actively engaged in the duties of a</p> <p>8 director, as far as you know?</p> <p>9 A Yes.</p> <p>10 Q Have you formed any other entities,</p> <p>11 other than Skyview and its subsidiaries?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 MR. CLUBOK: Sorry, what's the</p> <p>14 objection to that question?</p> <p>15 MS. SMITH: And what is the time period</p> <p>16 and the relation to this matter.</p> <p>17 MR. CLUBOK: Okay.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Have you formed any other entities</p> <p>20 other than Skyview and its subsidiaries?</p> <p>21 A I -- I don't understand how I can</p> <p>22 answer that, Mr. Clubok, because in my role as</p> <p>23 Highland, I was involved in forming numerous</p> <p>24 entities. I've formed entities for my own estate</p> <p>25 and tax planning on advice of counsel, so --</p>
<p>74</p> <p>1 A Sit on the board of any companies?</p> <p>2 I believe I still may be on a real estate</p> <p>3 transaction that was relative to the NexPoint</p> <p>4 Advise funds called "GEN," but I don't know if</p> <p>5 I'm still on the board there or not.</p> <p>6 Q Anything else?</p> <p>7 A No.</p> <p>8 Q Have you ever served as a director for</p> <p>9 any company affiliated with Highland Capital</p> <p>10 Management or Jim Dondero?</p> <p>11 A That's --</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: That's a difficult</p> <p>14 question to answer, as very often there are</p> <p>15 entities formed and they'll put my name or other</p> <p>16 senior employees' name as an officer or director</p> <p>17 of an LLC like an SPV without my knowledge, but an</p> <p>18 actual board, no.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q So other than being just listed in some</p> <p>21 document without your knowledge, you've never</p> <p>22 served as a director for any --</p> <p>23 A No, I think I was on -- I can't</p> <p>24 remember, but I -- I serve a short stint when Tray</p> <p>25 Parker resigned on a motion, I believe.</p>	<p>76</p> <p>1 I'm -- I'm trying my best to answer that.</p> <p>2 Maybe you if you could give me a</p> <p>3 timeframe or a limitation.</p> <p>4 Q How about -- since you became general</p> <p>5 counsel of Highland, are there any other entities,</p> <p>6 other than Skyview and its subsidiaries, that</p> <p>7 you've formed where you are the sole owner?</p> <p>8 A Again, other than relative to estate or</p> <p>9 tax planning on advice of counsel, no, or</p> <p>10 investment in these.</p> <p>11 I was involved in private investing</p> <p>12 with my own firms.</p> <p>13 Q What about Sentinel?</p> <p>14 A I did not form Sentinel.</p> <p>15 Q Who formed Sentinel?</p> <p>16 A Maples and Calder.</p> <p>17 Q Okay, you were an original equity owner</p> <p>18 of Sentinel; correct?</p> <p>19 A I would have to look at the original</p> <p>20 documentations. I don't know how that was held or</p> <p>21 structured.</p> <p>22 Q Well, you had an equity stake in</p> <p>23 Sentinel; correct?</p> <p>24 A Maybe ultimately. Again, I don't</p> <p>25 remember how it was structured.</p>

Conducted on July 29, 2021

<p>77</p> <p>1 Q Yeah, ultimately. You have an economic 2 interest in Sentinel -- maybe through some other 3 entities, but you have an ultimate economic 4 interest in Sentinel; correct?</p> <p>5 A Potentially. I would have to look how 6 that's held.</p> <p>7 Q And what about an entity called SAS?</p> <p>8 A Same. That was formed by Maples and 9 Calder.</p> <p>10 Q Formed by Maples and Calder. 11 But -- and that one you have all of the 12 equity interest; correct?</p> <p>13 A Not true.</p> <p>14 MS. SMITH: Object to the form.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Roughly, how much of the equity 17 interest in SAS do you have?</p> <p>18 A Again, it considers how it's held. I 19 don't know that I hold any as an individual. But 20 what could be argued that I was the ultimate 21 beneficial or a beneficiary in some way, it would 22 be 30 percent.</p> <p>23 Q And who has the other 70 percent of 24 SAS?</p> <p>25 A Entities --</p>	<p>79</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q But you personally believe that you 3 have -- whether it's directly or indirectly a 4 roughly 30 percent economic interest in Sentinel; 5 correct?</p> <p>6 A That's related to me somehow, yes.</p> <p>7 Q And you personally, whether directly or 8 indirectly, have a roughly 30 percent economic 9 interest in SAS; correct?</p> <p>10 A Again, in some way related to me, yes.</p> <p>11 Q Are there any other entities that have 12 been formed since you became general counsel of 13 Highland in which you have a economic interest 14 that you've not identified?</p> <p>15 A No, not that I'm aware of, except for 16 entities related to those two global monikers of 17 SAS and Sentinel.</p> <p>18 Q What is Millennium Risk Management?</p> <p>19 A I have no idea.</p> <p>20 Q What is TT3 Partners?</p> <p>21 A Never heard of it.</p> <p>22 Q What is BSN Ventures LLC?</p> <p>23 A I don't know.</p> <p>24 Q Did you ever form any entity with 25 Mr. Leventon?</p>
<p>78</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: Entities related to 3 Mr. Dondero.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Okay. And is that same 30/70 6 proportion apply to Sentinel, as far as you know?</p> <p>7 A As far as I know. Again, I don't know 8 how Mr. Dondero holds that. He may not hold any 9 as an individual. And the structure has changed 10 so many times for -- at the -- at the request of 11 the Cayman International Monetary authorities, I 12 don't even know what it looks like.</p> <p>13 Q But without getting into the 14 complicated structures -- and the court in this 15 case has asked at some point about those -- you 16 understand that the ultimate economic interest in 17 both Sentinel and SAS is split roughly 70/30 18 respectively between Mr. Dondero and you; correct?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: Or entities related to 21 us.</p> <p>22 I have no transparency, and Mr. Dondero 23 holds it. And to be quite honest with you, 24 without looking at the docs, I don't know how it 25 even is related to me.</p>	<p>80</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Strike that.</p> <p>4 Was an entity ever formed that had you 5 and Mr. Leventon as the chief economic 6 beneficiaries, either directly or indirectly?</p> <p>7 A Not that I recall, no.</p> <p>8 Q How about same question with respect to 9 Mr. DiOrio.</p> <p>10 A No, not that I recall.</p> <p>11 Q Same question with respect to William 12 T. Reid of Reid Collins.</p> <p>13 A No. No, that's not true. I'm involved 14 in an entity with Mr. Reid and one of his partners 15 on a deer lease outside of Austin, Texas. I 16 believe that's the BSN Ventures that you just 17 mentioned. They formed it, I didn't.</p> <p>18 Q Sorry. What is a deer lease?</p> <p>19 A You pay money to a rancher to lease 20 property to hunt upon.</p> <p>21 Q Is it for commercial purposes or is it 22 just a payment like you'd join a hunting club or a 23 golf club?</p> <p>24 A Exactly the same --</p> <p>25 MS. SMITH: Objection to form. And</p>

Conducted on July 29, 2021

<p>1 this is way off the track of the purpose of the 2 deposition. 3 THE WITNESS: Exactly the same as a 4 country club membership or a hunting club or a 5 tennis club or a golf membership, but it is paid 6 to an individual rancher. 7 BY MR. CLUBOK: 8 Q And you did enter into that arrangement 9 with Mr. Collins; right? 10 A No, Mr. Reid. 11 Q I'm sorry, Mr. Reid. 12 A And -- yeah, Mr. Reid and a partner of 13 his named Nate Palmer. And, again, they formed 14 the entity. I just paid my pro rata share to the 15 LLC. They run it, they manage it. 16 It is literally a friendship thing 17 that's centered around deer hunting. 18 Q And that firm for a while represented 19 Highland Capital Management in the litigation 20 against UBS; correct? 21 A Correct. 22 MS. SMITH: Objection to form. 23 BY MR. CLUBOK: 24 Q They did so until they sought to 25 withdraw earlier this year; correct?</p>	<p>81 83 1 individuals that you can recall ever discussing 2 what to do about the judgment that UBS obtained in 3 New York since Highland's bankruptcy and prior to 4 you being terminated from Highland Capital 5 Management; correct? 6 A I'm sure I hypothecated with -- I'm 7 certain that I did with Mr. Leventon just about, 8 you know, what we thought the outcome would be for 9 Mr. Sevilla. And I'm sure that I talked to 10 Mr. Reid about it several times, you know, because 11 I -- I interact with him socially, so you know how 12 those kind of conversions go. 13 Q Anybody else at all? 14 A Not that I can think of. 15 Q Did you ever tell me that there was an 16 insurance policy issued by Sentinel that 17 potentially could satisfy that judgment? 18 MS. SMITH: Objection to form. 19 THE WITNESS: No. 20 BY MR. CLUBOK: 21 Q Did you ever tell Mr. Dondero that 22 there was an insurance policy issued by Sentinel 23 that could potentially satisfy that judgment? 24 A I didn't need to tell Mr. Dondero. He 25 was aware of it since inception.</p>
<p>82 1 A Correct. 2 Q Did you discuss withdrawal with them? 3 A I did not. 4 Q Did you discuss the UBS litigation with 5 them during -- during 2020, the last year of your 6 employment with Highland Capital Management? 7 A Yeah, I'm sure I did at some point. 8 Q Did you ever discuss with them what to 9 do about the judgment that UBS obtained? 10 A No. 11 Q Did you discuss with anybody -- strike 12 that. 13 Post bankruptcy and prior to 14 termination, did you discuss with anybody in the 15 world what to do about the judgment that UBS 16 obtained in New York? 17 A Yes. 18 Q Who did you discuss that with? 19 A Again, what time period? I'm sorry. 20 Q From the time of the bankruptcy until 21 the time you were terminated. 22 A You, Mr. Dondero, Mr. Seery, former 23 Judge Nelms, Mr. Dubel. I think that's pretty 24 much it. 25 Q So that's the entire list of</p>	<p>84 1 Q Did you ever tell Mr. Seery that there 2 was an insurance policy issued by Sentinel that 3 could potentially satisfy at least part of the 4 judgment that UBS obtained in New York? 5 MS. SMITH: Objection to form. 6 THE WITNESS: No. 7 BY MR. CLUBOK: 8 MR. CLUBOK: What was the form 9 objection? 10 MS. SMITH: Well, it calls for a legal 11 conclusion on what the insurance policy can do and 12 who it can pay out on. 13 MR. CLUBOK: Okay. 14 BY MR. CLUBOK: 15 Q Did you ever tell Mr. Seery anything 16 at all about the insurance policy that was issued 17 by Sentinel with respect to the UBS litigation in 18 New York? 19 A No. 20 Q Did you ever tell Mr. Nelms, Judge 21 Nelms anything at all about the insurance policy 22 that was issued by Sentinel with respect to the 23 UBS litigation in New York? 24 A No. 25 Q Did you ever tell Mr. Dubel anything</p>

Conducted on July 29, 2021

<p>1 at all about the insurance policy that had been 2 issued by Sentinel with respect to the UBS 3 litigation in New York? 4 A No. 5 Q Did you ever tell Mr. Leventon anything 6 at all about the insurance policy that had been 7 issued by Sentinel with respect to the UBS 8 litigation in New York? 9 A Mr. Leventon knew about it since 10 inception. 11 Q Mr. Leventon, since inception, knew 12 that there was an insurance policy issued by 13 Sentinel with respect to the UBS litigation 14 pending in New York? 15 A Yes. 16 Q How did he know about that? 17 MS. SMITH: Objection. 18 THE WITNESS: He was part of the 19 overall group of a dozen, if not 20, people inside 20 of Highland that went through the process of 21 approving the transaction, so he was around for 22 the genesis, then quickly became not part of that 23 process. 24 BY MR. CLUBOK: 25 Q What do you mean quickly became not</p>	<p>85 87 1 Mr. Leventon because it was my idea. 2 Q It was your idea to have Sentinel issue 3 an insurance policy with respect to the UBS 4 litigation that was then pending in New York; 5 correct? 6 A Yes. 7 Q And when you initially had that idea, 8 you discussed it fully with Mr. Leventon? 9 A Well, I discussed with Mr. Leventon 10 because the idea came from a matter called 11 Cornerstone that Highland Capital Management, its 12 funds brought against Nautic, a private equity 13 advisor. And I had never heard of an ATE policy 14 before. And we discovered in that litigation that 15 they had made a payment out of their funds for a 16 premium. And they had bought an ATE policy, and 17 it produced a large settlement that the debtor and 18 Highland Capital Management funds benefited from. 19 Q And as a result of that, you discussed 20 with Mr. Leventon the idea of purchasing an ATE 21 policy from Sentinel with respect to the UBS 22 litigation that was then pending in New York? 23 A Mr. Leventon, Mr. Sevilla, Mr. Surgent 24 were the initial people that I had the 25 conversation with.</p>
<p>1 part of that process? 2 A It went to a process that was solely 3 compliance and finance and some individuals from 4 tax, if I remember correctly, and a couple of guys 5 in accounting and training. 6 Q When did it go to that? 7 A After about the second and third week 8 of discussing it as a possibility. 9 Q And Mr. Leventon never had anything 10 whatsoever to do with it after that? 11 A Not that I recall. 12 MS. SMITH: Objection to form. 13 THE WITNESS: I mean, there were -- 14 there were literally two dozen people involved, if 15 not more, so I don't -- I didn't really keep a 16 leash on Mr. Leventon and his involvement, but I 17 don't remember him being intimately involved. 18 BY MR. CLUBOK: 19 Q Did you ever mention that -- strike 20 that. 21 So you are saying Mr. Leventon -- the 22 idea first came to have a insurance policy issued 23 by Sentinel, Mr. Leventon was involved in that 24 initial conversation; correct? 25 A I had that initial conversation with</p>	<p>86 88 1 Q All three of those equally in terms of 2 being involved? 3 A They were all sitting -- 4 MS. SMITH: Objection to form. 5 THE WITNESS: They were all sitting in 6 Mr. Surgent's office when I walked in and said is 7 it possible to do an ATE like Nautic did? 8 BY MR. CLUBOK: 9 Q And this was the very first time that 10 you ever mentioned this idea to get an ATE policy 11 with respect to the UBS litigation to anyone? 12 A Yes. 13 Q And you mentioned that in Mr. Surgent's 14 office to a group that included Mr. Leventon, 15 Mr. Sevilla and Mr. Surgent? 16 A That's my memory, yes. 17 Q How long did you discuss it in the 18 initial meeting? 19 A Less than five minutes. 20 Q Okay. And then after that, did you 21 ever talk to Mr. Leventon again about the idea? 22 A I'm sure I did, yes. Or in a larger 23 group, because then it went through an approval 24 process and that became run by compliance. 25 Q And was Mr. Leventon aware that the</p>

Conducted on July 29, 2021

<p>89</p> <p>1 insurance policy was actually issued, as far as 2 you know? 3 MS. SMITH: Objection to form. 4 THE WITNESS: As far as I know. 5 BY MR. CLUBOK: 6 Q And was that because you discussed it 7 with Mr. Leventon since that policy has been 8 issued? 9 A I'm sure that I have. I don't recall 10 it specifically, but, you know, it's like every 11 person in the firm knew. 12 Q Every person in what firm knew? 13 A In Highland Capital Management, I'd be 14 surprised if anyone didn't know especially above a 15 certain level because they were involved or their 16 team members were involved. 17 Q Sorry, what specifically did every 18 person at Highland Capital Management above a 19 certain level know that you are referring to? 20 A That the ATE policy was being 21 considered because it went through its normal 22 process that involved almost every group in the 23 firm. 24 Q So, every single person who did an ATE 25 policy was being considered.</p>	<p>91</p> <p>1 A I did not. 2 Q And you never told Judge Nelms about 3 it; correct? 4 A I did not. 5 Q You never told John Dubel about it; 6 correct? 7 A I did not. 8 Q You never took any action to make sure 9 that the court -- the bankruptcy court was aware 10 about the ATE policy; correct? 11 MS. SMITH: Objection to form. 12 THE WITNESS: No, I did not. 13 BY MR. CLUBOK: 14 Q That's like one of those double 15 negatives, so let me just ask it again: It's true 16 that you never took any action to ensure that the 17 bankruptcy court became aware of the ATE policy 18 that had been taken out with respect to the UBS 19 litigation in New York; correct? 20 A Correct. 21 Q Did you ever make any effort to collect 22 on that policy? 23 A I -- 24 MS. SMITH: Objection to form. 25 THE WITNESS: No.</p>
<p>90</p> <p>1 And roughly when was that? 2 A Several months before it was put in 3 place. 4 Q And how many people knew it was 5 actually put in place? 6 A I would say the entire group that was 7 part of the process. 8 Q So virtually every single senior person 9 at Highland Capital Management knew that the ATE 10 policy had been put in place? 11 A That's my understanding. I'd be 12 shocked if they didn't. Because, again, we're 13 talking two dozen people involved in the process. 14 Q Right. But, as far as you -- 15 You have no knowledge that Mr. Seery was 16 ever made aware of this; correct? 17 A I-- I don't -- 18 MS. SMITH: Objection to form. 19 THE WITNESS: I don't know if Mr. Seery 20 was made aware of it or not. 21 BY MR. CLUBOK: 22 Q You -- you certainly never told 23 Mr. Seery about the ATE policy during your 24 employment at Highland Capital Management; 25 correct?</p>	<p>92</p> <p>1 MR. CLUBOK: Okay. I think this is a 2 good time for a break. 3 THE WITNESS: Okay. 4 THE VIDEOGRAPHER: We're going off the 5 record at 12:05 p.m. Eastern time. 6 (Recess taken 12:05 p.m. to 12:15 p.m.) 7 THE VIDEOGRAPHER: We're going back on 8 the record at 12:21 p.m. Eastern Time. 9 BY MR. CLUBOK: 10 Q Okay, Mr. Ellington, we've been talking 11 about an entity that I referred to as Sentinel, 12 and I believe there's some different entities with 13 Sentinel in their name, but when we've been 14 talking about Sentinel, have you understood me to 15 be referring to Sentinel Reinsurance Limited? 16 A Yes, I believe that is the main entity, 17 but I'd have to see an org chart. I don't know 18 what it looks like now. 19 Q And you recall it is a fairly 20 complicated structure with lots of different 21 entities and subs and pass-through entities and so 22 forth? 23 MS. SMITH: Objection to form. 24 THE WITNESS: That's my understanding. 25 BY MR. CLUBOK:</p>

Conducted on July 29, 2021

<p>93</p> <p>1 Q And -- and if I talk about it -- if I</p> <p>2 generally refer to it as Sentinel, will you</p> <p>3 understand it to be the collective organization,</p> <p>4 unless it's necessary to identify a specific sub</p> <p>5 or a specific entity; is that okay?</p> <p>6 A Yeah, yeah, that's fine with me. And</p> <p>7 if I get into any specificity, I may need to see</p> <p>8 an org chart.</p> <p>9 Q When was Sentinel formed, roughly?</p> <p>10 A My best recollection is 2012.</p> <p>11 Q What was the purpose of forming</p> <p>12 Sentinel, as far as you understood?</p> <p>13 A To create a reinsurer.</p> <p>14 Q For whom?</p> <p>15 A It was -- the instruction of</p> <p>16 Mr. Dondero was to make every attempt to originate</p> <p>17 and structure a Cayman-based reinsurer.</p> <p>18 Q So the idea for forming Sentinel, as</p> <p>19 far as you know, was Jim Dondero's.</p> <p>20 A Yes.</p> <p>21 Q And is he -- did he -- is he the one</p> <p>22 who explained to you the purpose behind forming</p> <p>23 Sentinel?</p> <p>24 A Yes.</p> <p>25 Q Was there anyone else in that</p>	<p>95</p> <p>1 interest in Sentinel if it was established.</p> <p>2 A No.</p> <p>3 Q When did he -- did he ever speak to you</p> <p>4 about the economics of Sentinel?</p> <p>5 A When you mean the economics, who would</p> <p>6 ultimately the potential beneficial owners?</p> <p>7 Q Yes.</p> <p>8 A At a much later date after it was</p> <p>9 established?</p> <p>10 Q Roughly when?</p> <p>11 A I would say probably six to nine</p> <p>12 months, if not a year, after it was established.</p> <p>13 I really can't remember.</p> <p>14 Q And what was the nature of that</p> <p>15 conversation, as best you can remember?</p> <p>16 A That because me and my team had been</p> <p>17 able to pull it off, that I would have some</p> <p>18 beneficial ownership.</p> <p>19 Q Because you were able to pull off</p> <p>20 establishing this full-service reinsurer?</p> <p>21 A Yes.</p> <p>22 Q And when you say "some beneficial</p> <p>23 ownership" ultimately you obtained about</p> <p>24 30 percent; correct?</p> <p>25 A Again, or entities somehow related to</p>
<p>94</p> <p>1 conversation when he initially told you about it?</p> <p>2 A I don't recall. I think it was just me</p> <p>3 and him.</p> <p>4 Q And what -- what else did he tell you</p> <p>5 about the kind of business that he expected</p> <p>6 Sentinel to engage in?</p> <p>7 A He wanted Sentinel to be a</p> <p>8 full-serviced reinsurer, not just a captive.</p> <p>9 Q Why?</p> <p>10 A Because he had attempted to do that</p> <p>11 with Gov Re, and due to regulatory issues, again,</p> <p>12 beyond my knowledge, he thought that Cayman was a</p> <p>13 better place to domicile a new reinsurer.</p> <p>14 Q Was the idea that -- when you say --</p> <p>15 when you say a full-service reinsurer, not just a</p> <p>16 captive, what's the distinction that you</p> <p>17 understood him to be making?</p> <p>18 A That captive reinsurers serve a limited</p> <p>19 set of counter-parties and ensure a limited set</p> <p>20 where a full service, it serves any and all</p> <p>21 potential parties.</p> <p>22 Q And did he talk to you about the</p> <p>23 economics during this initial conversation?</p> <p>24 A Meaning what?</p> <p>25 Q Meaning who would have the economic</p>	<p>96</p> <p>1 me.</p> <p>2 Q At what point did he tell you that</p> <p>3 that's the percentage you would get?</p> <p>4 A I don't recall.</p> <p>5 Q Well, roughly, how long after it was</p> <p>6 formed before --</p> <p>7 A I don't know. I'm sorry, I didn't let</p> <p>8 you finish your question.</p> <p>9 Q Sure. Was it, you know, within the</p> <p>10 first year that it was formed? Was it five years</p> <p>11 later? Just your best estimate.</p> <p>12 A Oh, within the first year. That's a</p> <p>13 very long due diligence period from the regulator.</p> <p>14 Q So within the first year of Sentinel</p> <p>15 being formed, it was established that you would,</p> <p>16 at least indirectly, if not directly, have a</p> <p>17 roughly 30 percent economic interest in Sentinel;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And Mr. Dondero would retain the other</p> <p>21 roughly 70 percent economic interest, as far as</p> <p>22 you understood; correct?</p> <p>23 A As far as --</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 THE WITNESS: As far as I understood,</p>

Conducted on July 29, 2021

<p>97</p> <p>1 again, or entities related to me or entities 2 related to him. I don't know how he holds it, if 3 he does hold it. 4 BY MR. CLUBOK: 5 Q Did Sentinel ever have a shared 6 services agreement with Highland Capital 7 Management? 8 A Not that I'm aware of. 9 Q Did Sentinel ever have an office? 10 A Did it have an office? Yes. 11 Q Where was its office? 12 A Grand Pavilion in the Cayman Islands. 13 Q Is that a mailbox or is it an actual 14 physical office? 15 A It is an actual physical office. 16 Q Was it dedicated just to Sentinel? 17 A Part of the office space was dedicated 18 to Sentinel. Part of the office space was 19 dedicated to SAS Management and its related 20 entities. 21 Q And so SAS is another entity that you 22 had, directly or indirectly, roughly 30 percent 23 economic interest in; correct? 24 A Or entities related to me and entities 25 related to SAS Management subs.</p>	<p>99</p> <p>1 which I don't know if you'd call them employees, I 2 don't know that it ever had employees, but I would 3 have to see how the independent directors employed 4 people, whether it is vendors or employees. I'm 5 not certain. 6 Q Okay. But other than the independent 7 directors, you are not aware of any employees of 8 Sentinel Reinsurance; correct? 9 A Not to my knowledge, no. 10 Q So it's correct that you are unaware of 11 any employees of Sentinel Reinsurance other than 12 the independent directors? 13 MS. SMITH: Object to form. 14 THE WITNESS: To my knowledge, yes. 15 BY MR. CLUBOK: 16 Q Did SAS have any employees? 17 A Other than the independent directors, 18 again, unless they hired people as employees or 19 vendors, that's -- that's their decision. And to 20 my knowledge, I don't think they did. 21 Q Who was responsible for -- for example, 22 let's say if Sentinel issued an insurance policy, 23 who was responsible for negotiating that? 24 A The independent directors and Beecher 25 Carlson.</p>
<p>98</p> <p>1 Q And you established an office in the 2 Caymans for both -- both of these entities to 3 share? 4 MS. SMITH: Objection to form. 5 BY MR. CLUBOK: 6 Q Strike that. 7 You understood an office was 8 established in the Caymans for Sentinel and SAS to 9 share? 10 A No, an office was established for SAS, 11 and then in the inception of Sentinel, they leased 12 part of the space. 13 Q When was SAS established? 14 A I want to say 2009. 15 Q Got it. So SAS was already in 16 existence when you got the idea or when you -- 17 when you achieved the formation of Sentinel, it 18 was arranged that SAS would share some of its 19 office space with Sentinel? 20 MS. SMITH: Objection to form. 21 THE WITNESS: Correct. 22 BY MR. CLUBOK: 23 Q And how many employees did Sentinel 24 have, if any? 25 A Other than the independent directors,</p>	<p>100</p> <p>1 Q What's Beecher Carlson? 2 A They are a service provider that is the 3 originator of the policies. 4 Q Where are they based out of? 5 A I believe they're based globally. I'm 6 not really certain. 7 Q Was there a person at Beecher Carlson 8 that you are familiar with who was responsible for 9 negotiating the terms of any insurance policy that 10 Sentinel issued? 11 A I never dealt with them, so I don't 12 know their names. 13 Q Who did deal with them? 14 A The independent directors. 15 Q Anybody else other than independent 16 directors ever deal with them? 17 A I'm sure other vendors, auditors, 18 counsel. 19 Q Is there anyone employed by Highland 20 Capital Management, to your knowledge, who ever 21 dealt with Beecher Carlson other than the 22 independent directors? 23 A Not to my knowledge. 24 Q Was there anyone at Highland -- strike 25 that.</p>

Conducted on July 29, 2021

<p>1 Was there any Highland Capital 2 Management employee who ever performed any 3 services on behalf of Sentinel Reinsurance? 4 MS. SMITH: Objection to form. 5 THE WITNESS: Not to my knowledge. 6 BY MR. CLUBOK: 7 Q What about JP Sevilla? 8 MS. SMITH: Objection to form. 9 THE WITNESS: My understanding, he did 10 not provide services to Sentinel. 11 BY MR. CLUBOK: 12 Q Did he ever -- was there anybody at 13 Highland who was a director for Sentinel? 14 A I believe for a period of time, 15 Mr. DiOrio was. 16 Q When he was a director of Sentinel -- 17 strike that. 18 He was a director of Sentinel during 19 his employment with Highland Capital Management? 20 MS. SMITH: Objection to form. 21 THE WITNESS: That's what I understand. 22 BY MR. CLUBOK: 23 Q And that continued until sometime after 24 his employment with Highland Capital Management, 25 till he resigned?</p>	<p>1 Highland -- with Highland Capital, when was the 2 last time you discussed the insurance policy with 3 anyone in the world? 4 A Anyone in the world? 5 Q Yes. 6 A Other than counsel? 7 Q No. Now I'm talking about while you 8 were still -- and you've got Mr. Feinstein here 9 who will object or tell you not to answer. But 10 I'm including now -- 11 A Okay. 12 Q -- Pachulski, other in-house counsel, 13 anyone in the world, while you were still at 14 Highland Capital Management. And so let me ask 15 the question again: What was the last time you 16 spoke to anyone about the ATE policy that was 17 taken out in connection with the UBS litigation in 18 New York while you were still employed at Highland 19 Capital Management? 20 MS. SMITH: Objection to form. 21 THE WITNESS: I believe that's 22 discussed last fall with Mr. Leventon. 23 BY MR. CLUBOK: 24 Q So you discussed the ATE policy last 25 fall with Mr. Leventon?</p>
<p>1 A I don't know -- I don't know when that 2 ended. 3 Q You are aware that he's -- well, he was 4 still a director of Sentinel Reinsurance at the 5 time that you and he were terminated from Highland 6 Capital Management; correct? 7 MS. SMITH: Objection to form. 8 THE WITNESS: I don't know. 9 BY MR. CLUBOK: 10 Q Was there any person at Highland who 11 had responsibility for day-to-day -- any -- any 12 duties with respect to Sentinel, whether as 13 monitoring them or dealing with them or anything 14 like that? 15 A That ran the day-to-day, no one in 16 particular, no. 17 Q Did you -- when was the last time you 18 discussed the insurance policy with anyone prior 19 to today, other than with your counsel? 20 A I'd say months. 21 Q Is that after you were terminated from 22 Highland Capital Management? 23 A I don't -- I don't recall discussing it 24 after I was terminated, no. 25 Q So prior to your termination with</p>	<p>1 A Yes. 2 Q And in great a detail as you can, 3 describe that conversation. 4 A I don't remember much about the 5 conversation. I just remember discussing the 6 existence of the policy with Mr. Leventon. 7 Q What did -- what did you say to him? 8 A I was discussing what the independent 9 directors may or may not do. 10 Q What do you mean -- with as much detail 11 as possible, describe exactly what you said to him 12 and what he said to you. 13 A I said, "What do you think the 14 independent directors are going to do relative to 15 the policy"? 16 Q What did he say? 17 A "Your guess is as good as mine." 18 Q And that's the only thing that you said 19 to each other about the policy, nothing else in 20 that conversation that you can remember? 21 A Not in -- not in -- not generally. 22 That was -- that was pretty much the limitation. 23 Q What -- what sparked that conversation? 24 Did you start that conversation or did 25 he start that conversation?</p>

Conducted on July 29, 2021

<p>105</p> <p>1 A I did.</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q And why did you start a conversation</p> <p>5 with Mr. Leventon about the ATE policy?</p> <p>6 A Because Mr. Leventon handled the matter</p> <p>7 for UBS for years, and I wanted to get his</p> <p>8 thoughts on it.</p> <p>9 Q And so you just said to him -- what --</p> <p>10 how did you start the conversation, as best you</p> <p>11 can remember?</p> <p>12 A I said, "Hey, what do you think the</p> <p>13 independent directors do relative to the ATE</p> <p>14 policy?"</p> <p>15 Q And he said, "Your guess is as good as</p> <p>16 mine," and that was the extent of your</p> <p>17 conversation, the best you can recall?</p> <p>18 A Pretty much.</p> <p>19 Q Did you discuss in any way in words or</p> <p>20 substance the question of whether or not the</p> <p>21 directors even knew about the policy?</p> <p>22 A The directors of Sentinel knew about</p> <p>23 the policy? No, I wouldn't, because it's obvious</p> <p>24 they know about a policy they issued.</p> <p>25 Q Oh, I'm sorry. Your -- I apologize. I</p>	<p>107</p> <p>1 light of the judgment?</p> <p>2 A No.</p> <p>3 Q Did you ever discuss the policy ever</p> <p>4 with any of the independent directors?</p> <p>5 A Never.</p> <p>6 Q Do you know if anyone did on behalf of</p> <p>7 Highland?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: No, I don't.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Do you know if anybody who worked at</p> <p>12 Highland Capital Management ever discussed the ATE</p> <p>13 policy with any of the independent directors of</p> <p>14 Sentinel?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: I have no knowledge of</p> <p>17 that.</p> <p>18 MR. CLUBOK: And what was the form</p> <p>19 objection for that question, Ms. Smith?</p> <p>20 MS. SMITH: Mr. Clubok, that calls for</p> <p>21 speculation. And I have been helping you out with</p> <p>22 your questions, and it is not my job to help you</p> <p>23 rephrase your questions.</p> <p>24 MR. CLUBOK: Yeah. My question was: Do</p> <p>25 you know? So it doesn't call for speculation. It</p>
<p>106</p> <p>1 misunderstood your answer.</p> <p>2 You asked Mr. Leventon what he thought</p> <p>3 the independent directors at Sentinel would do</p> <p>4 relative to the policy?</p> <p>5 A Yes.</p> <p>6 Q You -- I thought you meant the</p> <p>7 directors who had been put in place at Highland.</p> <p>8 But that's --</p> <p>9 A No.</p> <p>10 Q Okay. So let me -- let me just make</p> <p>11 sure the record's clear so -- and I apologize if</p> <p>12 I -- if it was clear from your mind, but I didn't</p> <p>13 understand.</p> <p>14 When you had this conversation with Mr.</p> <p>15 Leventon, you asked him what he thought the</p> <p>16 independent directors of Sentinel would do with</p> <p>17 respect to the ATE policy in light of the judgment</p> <p>18 that had been entered into UBS's favor; correct?</p> <p>19 A Correct.</p> <p>20 Q And he said in words or substance "Your</p> <p>21 guess is as good as mine"?</p> <p>22 A Yes.</p> <p>23 Q Did you ask him whether or not he had</p> <p>24 communicated anything with the independent</p> <p>25 directors about what to do with the policy in</p>	<p>108</p> <p>1 very clearly does not. I'm just going to -- you</p> <p>2 know, I sometimes ask you for your form objections</p> <p>3 when I really don't understand them.</p> <p>4 Sometimes your answers have helped me</p> <p>5 and I understand. Other times like that, I remain</p> <p>6 perplexed how you could say it calls for</p> <p>7 speculation. Maybe I -- maybe you didn't hear me</p> <p>8 ask him -- starting that question with, "Do you</p> <p>9 know". But I'm going to ask you, please -- if</p> <p>10 it's a question like that going forward, please</p> <p>11 don't make an objection if it's not warranted.</p> <p>12 MS. SMITH: I'll make my objections</p> <p>13 when needed.</p> <p>14 THE VIDEOGRAPHER: Counsel, this is the</p> <p>15 videographer.</p> <p>16 I think the witness is frozen.</p> <p>17 MR. CLUBOK: Oh, dear. Well, I guess</p> <p>18 it was a good time for Ms. Smith and I to have</p> <p>19 that little colloquy.</p> <p>20 THE VIDEOGRAPHER: Should we go off the</p> <p>21 record?</p> <p>22 MR. CLUBOK: Yeah.</p> <p>23 THE VIDEOGRAPHER: We are going off the</p> <p>24 record at 12:37 p.m.</p> <p>25 (Recess taken from 12:37 p.m. to 1:11</p>

Conducted on July 29, 2021

<p>1 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are going back on</p> <p>3 the record at 1:11 p.m. eastern time.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q So, Mr. Ellington, we were talking</p> <p>6 about the independent directors of Sentinel who</p> <p>7 you were discussing what they might do or not do</p> <p>8 with respect to the ATE policy last fall with Mr.</p> <p>9 Leventon; do you remember that before the break?</p> <p>10 A Yes.</p> <p>11 Q And who were the independent directors</p> <p>12 of Sentinel at the time?</p> <p>13 A I don't know. I know one of them's</p> <p>14 name was Jan. I don't know their names.</p> <p>15 Q When was the last time you spoke to any</p> <p>16 independent director at Sentinel?</p> <p>17 A I believe it was August of '19.</p> <p>18 Q And why did you speak to them in August</p> <p>19 of 2019?</p> <p>20 A A required meeting with Cayman's --</p> <p>21 Cayman Islands Monetary Authority.</p> <p>22 Q Did you discuss the UBS litigation at</p> <p>23 all during that conversation?</p> <p>24 A Not with the independent directors, but</p> <p>25 with CIMA.</p>	<p>111</p> <p>1 A No, I was not.</p> <p>2 Q So why were you the one having that</p> <p>3 meeting?</p> <p>4 A As a representative of the</p> <p>5 shareholders. I wasn't having the meeting; it was</p> <p>6 requested by CIMA.</p> <p>7 Q And, sorry, you represented the</p> <p>8 shareholders of Sentinel?</p> <p>9 MS. SMITH: Objection --</p> <p>10 THE WITNESS: No, as a shareholder of</p> <p>11 Sentinel or an entity relative to me as a</p> <p>12 shareholder.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q So you were -- you were there as a</p> <p>15 shareholder in Sentinel?</p> <p>16 A Correct.</p> <p>17 Q And in that -- so you did have some</p> <p>18 direct economic interest in Sentinel at the time?</p> <p>19 A No, not true.</p> <p>20 Q Okay. You had indirect interest in the</p> <p>21 equity value of Sentinel.</p> <p>22 A Like I said, or entities related to me.</p> <p>23 Q Were you the only person who was there</p> <p>24 before CIMA representing the interest of the</p> <p>25 shareholders?</p>
<p>110</p> <p>1 Q What's CIMA?</p> <p>2 A Cayman Islands Monetary Authority.</p> <p>3 Q And this is after the trial in the UBS</p> <p>4 litigation?</p> <p>5 A No, previous to the trial.</p> <p>6 Q You said it was August of 2019.</p> <p>7 A Oh, yeah, sorry. I'm sorry, Andy, I</p> <p>8 was -- I thought you meant the verdict. Sorry,</p> <p>9 yes, after the trial.</p> <p>10 Q Okay. So after the trial, but prior to</p> <p>11 the verdict, you spoke with Cayman Islands</p> <p>12 Monetary Authority about the UBS litigation?</p> <p>13 A Correct.</p> <p>14 Q And what was the nature of that</p> <p>15 investigation?</p> <p>16 A They wanted an update as to the status</p> <p>17 of the litigation.</p> <p>18 Q Why?</p> <p>19 A Because they have minimum annual</p> <p>20 meetings with the, at least, a director and other</p> <p>21 functions of the reinsurer to get a status on the</p> <p>22 portfolio.</p> <p>23 It is just an annual review that is</p> <p>24 required by CIMA.</p> <p>25 Q Well, were you a director of CIMA?</p>	<p>112</p> <p>1 A Yes.</p> <p>2 Q Was anyone else involved in that</p> <p>3 meeting?</p> <p>4 A Yes.</p> <p>5 Q Who?</p> <p>6 A Mr. Sevilla was there. Mr. DiOrion was</p> <p>7 there. The director's first name is Jan -- I</p> <p>8 don't know his last name -- independent director</p> <p>9 of Sentinel, and Sentinel's counsel.</p> <p>10 Q Who was Sentinel's counsel?</p> <p>11 A Her first name was Simone. I don't</p> <p>12 remember her last name.</p> <p>13 Q From what firm?</p> <p>14 A I believe she was from Soloman Harris,</p> <p>15 but I don't know that for a fact.</p> <p>16 Q Was she a Cayman attorney?</p> <p>17 A Yes.</p> <p>18 Q And was this meeting in the Cayman</p> <p>19 Islands?</p> <p>20 A Yes.</p> <p>21 Q And about how long did it last?</p> <p>22 A The portion I was involved in lasted</p> <p>23 about half an hour.</p> <p>24 Q Now, Katie Irving was also at that</p> <p>25 meeting; correct.</p>

Conducted on July 29, 2021

<p>113</p> <p>1 A I believe so, but I'm not certain.</p> <p>2 I cant remember, but I believe se may have been.</p> <p>3 Q And why was she there?</p> <p>4 A She was along on the trip to do other</p> <p>5 business with us, and she attended the meeting.</p> <p>6 Q What business was Ms. Irving doing that</p> <p>7 was unrelated to Sentinel?</p> <p>8 A Relative to SAS Management.</p> <p>9 Q So Ms. Irving was in the Caymans on</p> <p>10 that trip only with respect to business on behalf</p> <p>11 of SAS?</p> <p>12 A Yes.</p> <p>13 Q But you brought her along to this</p> <p>14 meeting with CIMA that was specifically focused on</p> <p>15 Sentinel?</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 A Because she asked if she should come</p> <p>19 and listen, and I said sure.</p> <p>20 Q Why?</p> <p>21 A I guess she had a curiosity. I don't</p> <p>22 know.</p> <p>23 Q Did you report to anyone about this</p> <p>24 meeting who was not at the meeting?</p> <p>25 A No.</p>	<p>115</p> <p>1 you?</p> <p>2 A I did not speak at the meeting.</p> <p>3 Q Who did?</p> <p>4 A Mostly Cayman counsel. I remember Jan</p> <p>5 discussing the portfolio, and potentially</p> <p>6 Mr. DiOrio. I don't recall if he spoke or not.</p> <p>7 Q Did anyone give any details about what</p> <p>8 had happened at the trial?</p> <p>9 A No.</p> <p>10 Q Did anyone talk about the merits of the</p> <p>11 UBS litigation in any way?</p> <p>12 A No.</p> <p>13 Q At the time -- now, you previously said</p> <p>14 a number of times that you believed that the</p> <p>15 defendants were going to lose that litigation even</p> <p>16 before the verdict came out; right?</p> <p>17 A Yes, I did.</p> <p>18 Q And in fact, you believed there was a</p> <p>19 decent chance that the defendants would get hit</p> <p>20 with substantial portion, if not all, of the</p> <p>21 billion dollars that was being sought; correct?</p> <p>22 A I didn't have an -- idea as to damages,</p> <p>23 but I thought the -- there was a likelihood that</p> <p>24 the defendants would lose.</p> <p>25 Q And you thought there was a likelihood</p>
<p>114</p> <p>1 Q So, no one other than you, Mr. Sevilla,</p> <p>2 Mr. DiOrio, Jan, Sentinel's counsel and Ms. Irving</p> <p>3 were informed about this meeting to the best of</p> <p>4 your knowledge?</p> <p>5 A To my knowledge, that's the only people</p> <p>6 that were informed, yes.</p> <p>7 Q And at this meeting, did you talk about</p> <p>8 the prospects -- this is after the trial had</p> <p>9 already occurred; right?</p> <p>10 A I believe so, yeah.</p> <p>11 Q And so for example, at the trial, the</p> <p>12 court ruled from the bench that -- in a way that</p> <p>13 disallowed one of the defendant's arguments</p> <p>14 specifically with respect to offset for hedging.</p> <p>15 Do you remember that?</p> <p>16 A I do.</p> <p>17 Q What's that?</p> <p>18 A Yes, I do.</p> <p>19 Q Did you tell CIMA about that</p> <p>20 development at trial?</p> <p>21 A I did not tell CIMA anything about the</p> <p>22 developments at trial.</p> <p>23 Q Did they ask?</p> <p>24 A No, they did not.</p> <p>25 Q Who spoke at the meeting, other than</p>	<p>116</p> <p>1 that the damages would be substantial, at least in</p> <p>2 the several hundred million dollar range; correct?</p> <p>3 A Again, I had no insight into what</p> <p>4 damages or how they would be calculated, but I</p> <p>5 thought the defendants would lose.</p> <p>6 Q And you said a number of times that it</p> <p>7 didn't surprise you at all about the size or the</p> <p>8 magnitude of the damages verdict; correct?</p> <p>9 A Correct.</p> <p>10 Q And you had warned Mr. Dondero, in</p> <p>11 words or substance, that this was likely to occur</p> <p>12 before the verdict came; correct?</p> <p>13 A Yes.</p> <p>14 Q Did you ever communicate those beliefs</p> <p>15 about the likelihood of a large judgment being</p> <p>16 issued against the defendants to anybody</p> <p>17 affiliated with Sentinel?</p> <p>18 A Myself, no.</p> <p>19 Q Did you -- are you aware of those</p> <p>20 beliefs about the likelihood of a large judgment</p> <p>21 being issued against the defendants in the UBS</p> <p>22 litigation being communicated to anyone affiliated</p> <p>23 with Sentinel?</p> <p>24 A Am I personally aware of it? No.</p> <p>25 Q Were you made -- did you get any --</p>

Conducted on July 29, 2021

<p>1 strike that.</p> <p>2 Did you ever come to believe that</p> <p>3 anyone at Sentinel was being advised as to the</p> <p>4 likelihood of a significant judgment coming out of</p> <p>5 the trial?</p> <p>6 A Yes.</p> <p>7 Q Describe the nature of that belief and</p> <p>8 the circumstances.</p> <p>9 A I believe, and I was told anecdotally,</p> <p>10 that Cayman counsel was following the matter very</p> <p>11 closely and updating the directors in their</p> <p>12 capacity.</p> <p>13 Q And Cayman counsel being Simone?</p> <p>14 A Yes. And I believe there may have been</p> <p>15 other Cayman counsel that Sentinel directors</p> <p>16 retained, but I don't know that.</p> <p>17 Q Who told you that Cayman counsel was</p> <p>18 following it very closely?</p> <p>19 A Simone.</p> <p>20 Q And -- but you never saw her</p> <p>21 communicate -- strike that.</p> <p>22 You never were copied on any</p> <p>23 communication she had with the Sentinel directors</p> <p>24 about the merits of the litigation?</p> <p>25 A Never.</p>	<p>117</p> <p>1 objection for that question?</p> <p>2 MS. SMITH: I'm not going to explain</p> <p>3 all of my objections.</p> <p>4 MR. CLUBOK: All right. Okay. I have</p> <p>5 a right to ask, and if you don't have a -- okay.</p> <p>6 I have a right to correct the form objection. So</p> <p>7 if there is a form objection, I have the right to</p> <p>8 ask you what the basis is, so I can correct it if</p> <p>9 it's -- if it's necessary.</p> <p>10 Are you going to tell me anything more</p> <p>11 than just objection to form?</p> <p>12 MS. SMITH: Okay. Well, any other</p> <p>13 human in the world is fake.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. Mr. Ellington, when I say any</p> <p>16 other human in the world, are you confused that I</p> <p>17 might be talking about animals or something;</p> <p>18 nonhuman -- nonhumans?</p> <p>19 A Not confused. But it's certainly very</p> <p>20 difficult to remember what I said to every human</p> <p>21 in the world, well over a period of five years.</p> <p>22 Q Sure. But between August of 2019, when</p> <p>23 you met in the Caymans with CIMA and the</p> <p>24 discussions you had with Mr. Leventon that you've</p> <p>25 described in the fall of 2020, did you discuss the</p>
<p>118</p> <p>1 Q And you don't know anything more than</p> <p>2 she assured you that the Sentinel directors were</p> <p>3 being closely informed?</p> <p>4 A A general statement as we were walking</p> <p>5 from the car into CIMA.</p> <p>6 Q So she told you on the way in words to</p> <p>7 the effect that the directors know all about the</p> <p>8 events of the litigation and that prospects?</p> <p>9 A Yes.</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Other than that, were you ever made</p> <p>14 aware in any way of what extent to which the</p> <p>15 directors at Sentinel were being kept apprized of</p> <p>16 the prospects for the New York litigation against</p> <p>17 UBS?</p> <p>18 A No.</p> <p>19 Q And in between that meeting in August</p> <p>20 of '19 and the meeting in the fall with Isaac</p> <p>21 Leventon where you described, did you ever discuss</p> <p>22 the ATE policy with any other human in the world?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: Not that I recall.</p> <p>25 MR. CLUBOK: And what's the form</p>	<p>119</p> <p>1 ATE policy with anybody else at all that you can</p> <p>2 think of, sitting here today?</p> <p>3 A Not that I recall.</p> <p>4 Q Did Mr. Leventon ever seek out your</p> <p>5 advice as to whether or not to disclose the</p> <p>6 existence of the policy to the independent</p> <p>7 directors that were appointed to manage Highland's</p> <p>8 affairs in the bankruptcy?</p> <p>9 A Not that I specifically recall.</p> <p>10 Q Did Mr. Leventon ever seek out your</p> <p>11 advice as to whether or not to disclose the</p> <p>12 existence of the ATE policy to the Pachulski firm</p> <p>13 or any lawyer that was representing Highland in</p> <p>14 connection with the bankruptcy?</p> <p>15 A Not that I recall.</p> <p>16 Q Do you recall ever discussing with</p> <p>17 Mr. Leventon whether or not the ATE policy should</p> <p>18 be disclosed in connection with the bankruptcy?</p> <p>19 A No, not Mr. Leventon.</p> <p>20 Q With anyone?</p> <p>21 A Maybe I didn't understand your</p> <p>22 question. I'm sorry.</p> <p>23 Could you ask -- could you please ask</p> <p>24 it again?</p> <p>25 Q Did you ever recall discussing with</p> <p>120</p>

Conducted on July 29, 2021

<p>121</p> <p>1 anybody whether or not the ATE policy should be 2 disclosed to anybody in connection with the 3 bankruptcy? 4 A I remember having a conversation with 5 Cayman counsel in regards to that. 6 Q Who at Cayman counsel? 7 A Sam Dawson. 8 Q And when was that discussion? 9 A Sometime post the filing. I don't 10 remember when. Post the debtor filing bankruptcy. 11 Q So at that time you were the general 12 counsel for Highland; correct? 13 A Yes. 14 Q And Highland was in bankruptcy? 15 A Yes. 16 Q And the Pachulski firm was representing 17 Highland in the bankruptcy? 18 A The Pachulski firm notified us in 19 writing that they weren't representing Highland, 20 they were representing the independent board. 21 Q Okay. Pachulski was representing the 22 independent board. 23 So the board had already been named in 24 the bankruptcy; correct? 25 A Yes.</p>	<p>123</p> <p>1 with Mr. Dawson. 2 Did you initiate that conversation? 3 MS. SMITH: Objection -- objection. 4 I'm going to object to the extent that any of 5 these answers require you to divulge privileged 6 information. 7 BY MR. CLUBOK: 8 Q Did you -- let's go back to this 9 conversation with Mr. Dawson. 10 Did you initiate that conversation? 11 A I did not. 12 Q He called you. 13 MS. SMITH: Objection, privileged. 14 THE WITNESS: I was speaking to 15 Mr. Dawson on an unrelated matter. 16 BY MR. CLUBOK: 17 Q Okay. And who brought up the issue of 18 the ATE policy? 19 A I don't recall if it was me or him. 20 Q And describe what was said about it. 21 MS. SMITH: Objection to the extent it 22 requires you to disclose privileged information. 23 THE WITNESS: I think I'm clearly 24 describing privileged information. 25 BY MR. CLUBOK:</p>
<p>122</p> <p>1 Q In the discussion with Mr. Dawson? 2 A Yes, that's my recollection. 3 Q And his name is Dawson, D-A-W-S-O-N? 4 A Yes. 5 Q And you were -- you say that at the 6 time, Pachulski was not representing the debtor. 7 A Very -- very soon after the independent 8 award was put in place, Mr. Pomerantz maybe 9 others, wrote correspondence to a subset of us, 10 I believe a legal group -- maybe -- I don't 11 remember who all was included -- that said that 12 they did not represent Highland and certainly 13 didn't represent the employees and could not 14 provide us with legal advice. There was no 15 privilege that they -- they represented the 16 independent board, which needless to say we were a 17 little shocked by since they are called debtor's 18 counsel. 19 Q And you understood them to say that 20 there would be no privy with any discussions that 21 you had with the Pachulski firm from that point 22 forward? 23 A That's my recollection of the 24 correspondence. 25 Q So let's get back to this conversation</p>	<p>124</p> <p>1 Q Sorry, who was Mr. Dawson representing 2 at that point in the -- in connection with that 3 discussion? 4 A I believe he was Sentinel's counsel at 5 that point. 6 Q And you believed when you had this 7 discussion you were acting with your Sentinel hat 8 on exclusively? 9 A I believe this discussion I was having 10 a conversation on an unrelated matter and the 11 issue arose. 12 Q Right. But I'm -- in this particular 13 issue of whether or not to disclose the ATE policy 14 to the independent board, is it your testimony 15 that when you spoke -- I want to understand. What 16 capacity were you speaking with Mr. Dawson about 17 when you had the -- just that portion of the 18 discussion. I haven't asked you about the rest of 19 your discussion, but I'm asking about the question 20 about whether to disclose the ATE policy to the 21 independent board was -- and -- and actually let 22 me take a step back. 23 At that time, did you understand that 24 you reported to the independent board? 25 A No, I didn't report to the independent</p>

Conducted on July 29, 2021

<p>125</p> <p>1 board. I believe I reported to Jim Seery at that</p> <p>2 point.</p> <p>3 Q At that point, you reported to Mr.</p> <p>4 Seery?</p> <p>5 A I believe so, yes.</p> <p>6 Q And did you discuss with Mr. Dawson</p> <p>7 whether to disclose the ATE policy to Mr. Seery?</p> <p>8 A Matter of fact, I may have just been</p> <p>9 reporting to Mr. Dondero at this time. I just</p> <p>10 don't remember the timeframe.</p> <p>11 Q Okay.</p> <p>12 A Because it's kind of fuzzy of when</p> <p>13 Mr. Seery became the CEO and when Mr. Dondero was</p> <p>14 the CEO.</p> <p>15 Q What did Mr. -- what did Mr. Dawson</p> <p>16 tell you what to do in terms of whether or not to</p> <p>17 disclose the ATE policy to Mr. Seery?</p> <p>18 A He was not --</p> <p>19 MS. SMITH: Objection.</p> <p>20 THE WITNESS: -- not disclosing it to</p> <p>21 the board, he was discussing ATE policies in</p> <p>22 general.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q In my opinion, he was just talking</p> <p>25 about ATE policies in general, not this specific</p>	<p>127</p> <p>1 general counsel of Highland's hat on or some</p> <p>2 different hat on?</p> <p>3 A It was no hat. It was a social call.</p> <p>4 His wife had recently passed away from cancer, and</p> <p>5 I was calling to give him my condolences.</p> <p>6 Q So you are saying this is privileged</p> <p>7 advice.</p> <p>8 Whose privilege is it?</p> <p>9 A Well, the other matters we talked about</p> <p>10 was an SAS matter.</p> <p>11 Q I'm not asking about any other matter.</p> <p>12 I'm asking what's the portion of that conversation</p> <p>13 about whether or not to disclose the ATE policy</p> <p>14 that was taken out in connection with the UBS New</p> <p>15 York litigation to the directors that were</p> <p>16 appointed on the restructuring. That's the only</p> <p>17 part of this conversation I'm asking about.</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Okay. With respect to the part of the</p> <p>21 conversation where Mr. Dawson gave you advice as</p> <p>22 to whether or not to disclose the ATE policy to</p> <p>23 the ORG members who had been appointed in the</p> <p>24 restructuring case, whose privilege are you</p> <p>25 asserting for not disclosing what he said? Who</p>
<p>126</p> <p>1 ATE policy?</p> <p>2 A Correct.</p> <p>3 Q And -- okay. This kind of -- this line</p> <p>4 of questioning began when I asked you if you</p> <p>5 recall discussing with anybody whether or not the</p> <p>6 ATE policy should be disclosed to anybody in</p> <p>7 connection with the bankruptcy, and you said you</p> <p>8 had a conversation with Sam Dawson in regards to</p> <p>9 that.</p> <p>10 A About generally in a matter of practice</p> <p>11 under Cayman law if the ATE policy should be</p> <p>12 disclosed and when.</p> <p>13 Q What did he tell you?</p> <p>14 MS. SMITH: Objection, privileged.</p> <p>15 THE WITNESS: Yeah, I think I'm clearly</p> <p>16 into privileged conversation.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Sorry, and you -- because you were at</p> <p>19 the time not getting advice -- were you -- were</p> <p>20 you at the time seeking advice on behalf -- well,</p> <p>21 at the time you were general counsel still of</p> <p>22 Highland; right?</p> <p>23 A Correct.</p> <p>24 Q And are you saying that -- when you</p> <p>25 asked that question, were you asking with your</p>	<p>128</p> <p>1 was the entity that had the privilege there?</p> <p>2 A It was going to be Sentinel's privilege</p> <p>3 since he was, I believe, Sentinel's counsel at the</p> <p>4 time.</p> <p>5 Q So you were speaking to him in that --</p> <p>6 with that -- respect to that part of the</p> <p>7 conversation, just on behalf of Sentinel and not</p> <p>8 on behalf of Highland Capital Management; is that</p> <p>9 what you're saying?</p> <p>10 A I didn't sit there -- I didn't sit</p> <p>11 there and parse through an extemporaneous</p> <p>12 conversation of what hat I was wearing. But since</p> <p>13 he's Sentinel counsel, I think it's their</p> <p>14 privilege because since he was having legal</p> <p>15 advice.</p> <p>16 Q Right. But at the time you were</p> <p>17 general counsel of Highland Capital Management.</p> <p>18 And I'm going to ask again -- and I believe</p> <p>19 Mr. Feinstein clearly by his silence is not</p> <p>20 asserting any privilege that you obtained while</p> <p>21 you were still being paid by Highland Capital</p> <p>22 Management -- what was the advice Mr. Dawson gave</p> <p>23 you as to whether or not you should disclose that</p> <p>24 ATE policy to the directors who were appointed in</p> <p>25 the bankruptcy?</p>

Conducted on July 29, 2021

<p>129</p> <p>1 MS. SMITH: Objection, privileged. I'm</p> <p>2 going to instruct you not to answer.</p> <p>3 MR. CLUBOK: And the -- and I want you</p> <p>4 to lay out exactly the basis of your instruction,</p> <p>5 Ms. Smith.</p> <p>6 You are asserting purely on behalf of</p> <p>7 Sentinel; is that correct?</p> <p>8 MS. SMITH: I'm instructing</p> <p>9 Mr. Ellington not to answer to the extent it</p> <p>10 discloses privileged information of Sentinel.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Are you -- are you instructing him</p> <p>13 specifically not to -- so -- so the fact that</p> <p>14 Mr. Ellington was general counsel of Highland at</p> <p>15 the time, you are saying that in this</p> <p>16 conversation, though, you did not -- you're</p> <p>17 parsing the information in your head so that</p> <p>18 Highland doesn't -- didn't gain access to it?</p> <p>19 MS. SMITH: No, I'm listening to his</p> <p>20 testimony where he testified that it was a social</p> <p>21 call. He did not call him as general counsel of</p> <p>22 Highland Capital Management LP.</p> <p>23 He called as a social call, and he</p> <p>24 asked a question generally -- I don't have the</p> <p>25 realtime up, but he asked a question generally</p>	<p>131</p> <p>1 wonder if I have a fiduciary obligation to</p> <p>2 disclose the existence of ATE policy to Mr. Seery?</p> <p>3 MS. SMITH: Objection.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Did you consider that question in words</p> <p>6 or substance?</p> <p>7 MS. SMITH: Objection, calls for a</p> <p>8 legal conclusion.</p> <p>9 THE WITNESS: I generally considered</p> <p>10 it, yes.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q And did you consult anyone for advice,</p> <p>13 other than this -- whatever general discussion you</p> <p>14 had with Mr. Dawson in the context of the social</p> <p>15 call?</p> <p>16 A No.</p> <p>17 MS. SMITH: Objection to the extent it</p> <p>18 calls for privileged information.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q And did you independently conclude</p> <p>21 whether or not as the general counsel of Highland</p> <p>22 Capital Management you had a duty to disclose the</p> <p>23 existence of the ATE policy to Mr. Seery or the</p> <p>24 Pachulski firm?</p> <p>25 MS. SMITH: Objection, legal</p>
<p>130</p> <p>1 about ATE's policies and Sentinel.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q And did you ask him -- did you ever ask</p> <p>4 anybody, in your capacity as general counsel of</p> <p>5 Highland, for any advice as to whether or not you</p> <p>6 should disclose the existence of the ATE policy to</p> <p>7 the board that was appointed in the restructuring</p> <p>8 case?</p> <p>9 A No.</p> <p>10 Q Did you ever ask anybody, in your</p> <p>11 capacity as general counsel for Highland, for any</p> <p>12 advice as to whether or not you should disclose</p> <p>13 the existence of the ATE policy to Jim Seery?</p> <p>14 A No.</p> <p>15 Q Did you ever consider the question of</p> <p>16 whether or not you should disclose the existence</p> <p>17 of the ATE policy to Jim Seery in the perspective</p> <p>18 of your role as general counsel of Highland</p> <p>19 Capital Management?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: What do you mean by</p> <p>22 consider?</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Did you ever think with your general</p> <p>25 counsel of Highland Capital Management hat on, I</p>	<p>132</p> <p>1 conclusion.</p> <p>2 THE WITNESS: Yes, I have generally</p> <p>3 concluded.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q What was your conclusion?</p> <p>6 A That I was under no obligation to</p> <p>7 disclose it.</p> <p>8 Q What was that based on?</p> <p>9 A As I previously said, Pachulski had</p> <p>10 said they had no representation of any Highland</p> <p>11 employee, only an independent board. They didn't</p> <p>12 represent the debtor. There was no privilege.</p> <p>13 I -- as you know, you had even asked to</p> <p>14 speak to me because you and I had always had a</p> <p>15 good rapport of trying to solve things and had</p> <p>16 made numerous attempts to solve things. And I was</p> <p>17 affirmatively told by Pachulski and the</p> <p>18 independent board not to be a part of any</p> <p>19 settlement discussions in any way and not to speak</p> <p>20 to you in any way.</p> <p>21 Q Is there -- you knew that Mr. Seery and</p> <p>22 the Pachulski firm was at some point making an</p> <p>23 effort to identify all of the assets of CDO Fund,</p> <p>24 SOHC and HFP; correct?</p> <p>25 MS. SMITH: Objection to form.</p>

Conducted on July 29, 2021

<p>1 THE WITNESS: I generally knew that 2 they were -- they were looking at the assets of 3 those entities, yes. 4 BY MR. CLUBOK: 5 Q And you knew that the trigger for the 6 ATE policy had already occurred as of the date of 7 the judgment? 8 MS. SMITH: Objection to form. 9 BY MR. CLUBOK: 10 Q Correct? 11 A I disagree. 12 Q Why do you disagree with that? 13 A It was intimated to me that the trigger 14 would be a perfection of a judgment from New York 15 to the Cayman Islands. 16 Q Who intimated that to you? 17 A CIMA. 18 MS. SMITH: Objection. 19 BY MR. CLUBOK: 20 Q CIMA did? 21 A Yes. 22 Q When? 23 A In the meeting aforementioned in August 24 of '19. 25 Q So it was intimated to you that until</p>	<p>133 1 would also trigger the policy; correct? 2 MS. SMITH: Objection to form. 3 THE WITNESS: I don't have the 4 expertise to say whether that triggers a policy or 5 not. That's not a determination I could make. 6 BY MR. CLUBOK: 7 Q Isn't it true that Mr. Leventon at some 8 point consulted with you about whether or not he 9 should disclose the policy to either Mr. Seery or 10 the lawyers at the Pachulski firm? 11 A I don't know. 12 MS. SMITH: Objection to form. 13 BY MR. CLUBOK: 14 Q Sorry, can you answer the -- I think 15 your answer came in over Ms. Smith's objection, so 16 I'll ask the question again. 17 Is it true that Mr. Leventon at some 18 point consulted with you about whether or not he 19 should disclose the ATE policy to either Mr. Seery 20 or the lawyers at the Pachulski firm? 21 A I don't recall. 22 Q Between -- other than this meeting with 23 CIMA and the discussion you had with Mr. Leventon, 24 did you ever discuss the ATE policy with anyone 25 else in the world since the bankruptcy that you</p>
<p>134 1 the judgment was perfected in the Cayman Islands, 2 there was no trigger for paying ATE? 3 A Yes. 4 Q Who specifically intimated that to you? 5 A CIMA. 6 Q Who, name of a human being. 7 A I don't know the human being's name. 8 There was five people from CIMA in the room. It 9 was three years ago. 10 Q When you say it was intimated, what do 11 you mean? 12 A They said there is not a claim on the 13 policy to perfect the judgment here. 14 Q Was it a man or a woman who said that? 15 A It was a man. 16 Q Was it the man who was the -- was there 17 one person who was the principal spokesperson for 18 CIMA at this meeting? 19 A Yes. 20 Q And you just don't remember his name? 21 A No. 22 Q Did you have any documents, records of 23 this meeting? 24 A No. 25 Q And now if there is a settlement, that</p>	<p>135 1 can recall other than -- 2 A Not that I recall. 3 Q -- other than Ms. Smith? 4 A Not that I recall. 5 Q Did you ever discuss -- when was the 6 last time you spoke to Mr. Dondero about the ATE 7 policy? 8 A I would say at least two years. 9 Q And what was the nature of that 10 conversation? 11 A I believe that Mr. Dondero asked me if 12 it was still in place. 13 Q Roughly when was that? 14 A I would say sometime in 2018. 15 That's -- that's my best guess. 16 Q Was it before or after the trial? 17 A Before. 18 Q So before the trial, he asked you if 19 the ATE policy was still in place? 20 A Yes. 21 Q And what did you say? 22 A I said as far as I know, yes. 23 Q And after the trial, but before the 24 judgment, did you ever speak with Mr. Dondero 25 again about the ATE policy?</p>

Conducted on July 29, 2021

<p>137</p> <p>1 A Not that I recall.</p> <p>2 Q And after the judgment, did you ever</p> <p>3 talk to Mr. Dondero about how the ATE policy could</p> <p>4 somehow be used to satisfy the judgment or settle</p> <p>5 the case?</p> <p>6 A No.</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: Not that I recall.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Right before the bankruptcy, you tried</p> <p>11 to settle the claims against CDO Fund, SOHC and</p> <p>12 HFP; correct?</p> <p>13 A Yes, I approached you to try to</p> <p>14 structure a settlement.</p> <p>15 Q And you claimed at the time that those</p> <p>16 funds were ghost funds, in your words; correct?</p> <p>17 A Yes.</p> <p>18 Q And you -- basically, you said, in</p> <p>19 substance, though, they had no assets left, but if</p> <p>20 there was a settlement, that Mr. Dondero could</p> <p>21 come up with funds from some other source to</p> <p>22 satisfy a relatively small settlement on behalf of</p> <p>23 those funds; is that true?</p> <p>24 A On behalf of all defendants, yes.</p> <p>25 Q Well, you specifically talked about --</p>	<p>139</p> <p>1 A Absolutely. It is my fault, and there</p> <p>2 is some slight delay on my end, so I think that's</p> <p>3 part of the problem. I apologize.</p> <p>4 Q That's okay. I appreciate -- again,</p> <p>5 like I said, I appreciate your effort to just</p> <p>6 answer these questions clearly, but you overshot</p> <p>7 that by a scooch.</p> <p>8 A I apologize to both you and Ms. Smith</p> <p>9 and the court reporter. I'm not trying to do that</p> <p>10 at all.</p> <p>11 Q No, no, I understand. I understand.</p> <p>12 A Yeah.</p> <p>13 Q So let me just ask it one more time.</p> <p>14 You never disclosed in the course of</p> <p>15 any settlement discussions with UBS's counsel that</p> <p>16 there was an ATE policy that could satisfy a</p> <p>17 potential settlement of the claims against CDO</p> <p>18 Fund, SOHC and HFP; correct?</p> <p>19 A The only person I discussed it with was</p> <p>20 you, and, no, I did not disclose that.</p> <p>21 Q I apologize if I've asked this earlier:</p> <p>22 Did Sentinel ever have a shared services agreement</p> <p>23 with Highland Capital Management?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q Does it have one today with Skyview?</p>
<p>138</p> <p>1 you specifically talked about settling the</p> <p>2 non-HCM-related claims for a relatively small</p> <p>3 amount and then separately agreeing to an allowed</p> <p>4 claim for HCM; isn't that true?</p> <p>5 A That was one of the options you and I</p> <p>6 discussed. We discussed many options.</p> <p>7 Q And you never disclosed the fact that</p> <p>8 there was an ATE policy that could satisfy a</p> <p>9 potential settlement of the claims against CDO</p> <p>10 Fund, SOHC and HFP; correct?</p> <p>11 A Correct.</p> <p>12 -- (overspeaking) --</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q I want to make sure the court reporter</p> <p>16 got the -- okay. There was simultaneous speakers,</p> <p>17 so I don't think she heard your answer even though</p> <p>18 the audio will capture it.</p> <p>19 And do me a favor, Mr. Ellington.</p> <p>20 Since Ms. Smith is objecting sometimes, if you</p> <p>21 could -- I really appreciate you giving answers</p> <p>22 quickly on the one hand. On the other hand, if</p> <p>23 you could just take one more beat so that you are</p> <p>24 not talking over her as she's making her</p> <p>25 objections, that will be helpful.</p>	<p>140</p> <p>1 A Not that I'm aware of.</p> <p>2 Q Does it have a client relationship with</p> <p>3 Skyview?</p> <p>4 THE WITNESS: Not that I'm --</p> <p>5 MS. SMITH: Object to the form.</p> <p>6 THE WITNESS: Sorry, not that I'm aware</p> <p>7 of.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Let's turn to what's behind tab 2,</p> <p>10 Exhibit 50.</p> <p>11 I think we do have here -- we've asked</p> <p>12 you before about the ownership interest, and you</p> <p>13 said you had seen some documents. Hopefully this</p> <p>14 will help refresh your recollection.</p> <p>15 A You want me to go ahead and open the</p> <p>16 envelope, Mr. Clubok?</p> <p>17 Q Yeah, open Exhibit 50. Exhibit 50 --</p> <p>18 while you're opening it, I'll just describe -- is</p> <p>19 an email exchange that starts with an email from</p> <p>20 Mr. Sevilla to SEI-IS-Highland and that appears to</p> <p>21 be to someone named Daniel Bowen, and there is</p> <p>22 some back and forth that continues through the</p> <p>23 email chain between these two individuals.</p> <p>24 Do you have Exhibit 50 in front of you?</p> <p>25 A I do.</p>

Conducted on July 29, 2021

<p>141</p> <p>1 Q Do you know who Mr. Bowen is?</p> <p>2 A I do not.</p> <p>3 Q Do you know what SEIC is?</p> <p>4 A Say that again. I'm sorry.</p> <p>5 Q Do you know what SEIC is?</p> <p>6 A I do not.</p> <p>7 Q Or SEI-IS?</p> <p>8 A I do not.</p> <p>9 Q Okay. So, in this email Mr. Sevilla --</p> <p>10 this is August 28th, 2017 and the subject is</p> <p>11 "Highland Multi-track Transfer."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And it says, "SEI. Please see transfer</p> <p>15 documents attached from Multi Strat firm. Please</p> <p>16 let me know if you have any questions."</p> <p>17 Do you see that?</p> <p>18 A I do.</p> <p>19 Q And you don't know who SEI is in that</p> <p>20 context?</p> <p>21 A I do not.</p> <p>22 Q And you see Mr. Bowman responds and</p> <p>23 says, "We are in the process of reviewing the</p> <p>24 attached and still require additional</p> <p>25 documentation. Can you please provide" and there</p>	<p>143</p> <p>1 to look at the whole exhibit.</p> <p>2 THE WITNESS: No, I have not.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I have a very specific question.</p> <p>5 MR. CLUBOK: And I'd appreciate no</p> <p>6 speaking objections or instructions like that when</p> <p>7 they're not necessary.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Sometimes, Mr. Ellington, if it's</p> <p>10 necessary to read a whole document, that's fine,</p> <p>11 obviously. But I'm going to just ask -- and I'll</p> <p>12 ask my question more clearly: Just with respect to</p> <p>13 this particular statement that Sentinel Re</p> <p>14 Holdings is a limited partner in the fund and</p> <p>15 Sentinel Reinsurance Limited is 100 percent owned</p> <p>16 by Sentinel Re Holdings, do you have any basis to</p> <p>17 disagree with those statements?</p> <p>18 A I don't have any basis to agree or</p> <p>19 disagree. I don't have enough information to...</p> <p>20 Q Is this the kind of -- yeah, is this</p> <p>21 the kind of information you would trust JP Sevilla</p> <p>22 to report on accurately during this time period?</p> <p>23 A I don't have any reason to believe that</p> <p>24 Mr. Sevilla would be inaccurate.</p> <p>25 Q Why -- was Mr. Sevilla tasked with</p>
<p>142</p> <p>1 are a number of things that they list.</p> <p>2 Do you see that?</p> <p>3 A Yes, I do.</p> <p>4 Q And one of them that's shaded out</p> <p>5 that's maybe hard for you to read. And it says,</p> <p>6 "List of beneficial owners with 25 percent or more</p> <p>7 interest. Additional AML required."</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q And Mr. Sevilla says, "Please note that</p> <p>11 you already have the items I've highlighted in</p> <p>12 yellow. Sentinel Re Holdings is a limited partner</p> <p>13 in the fund already and Sentinel Reinsurance</p> <p>14 Limited is 100 percent owned by Sentinel Re</p> <p>15 Holdings."</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q And do you have any reason to disagree</p> <p>19 with what Mr. Sevilla says here?</p> <p>20 A I don't have --</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 And, Mr. Ellington, please review the</p> <p>23 whole exhibit before you answer specific</p> <p>24 questions.</p> <p>25 I don't think he's had an opportunity</p>	<p>144</p> <p>1 dealing with the Highland Multi Strat transfer?</p> <p>2 A I don't know.</p> <p>3 Q August 28, 2017 is around the time</p> <p>4 shortly there -- shortly after the time that the</p> <p>5 ATE policy was purchased; correct?</p> <p>6 A I don't know.</p> <p>7 Q Well, there was a highly Multi Strat</p> <p>8 transfer in connection with the purchase of the</p> <p>9 ATE policy; correct?</p> <p>10 A I really don't know.</p> <p>11 Q You do know that the intent of</p> <p>12 purchasing the policy was to transfer all or</p> <p>13 substantially all of the assets of CDO Fund, SOHC</p> <p>14 and HFP; correct?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: The purpose of purchasing</p> <p>17 the policy was to transfer?</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q No, no, sorry, let me -- let me ask</p> <p>20 again.</p> <p>21 You know, sir, that in the -- the part</p> <p>22 of the -- strike that.</p> <p>23 As part of the purchase of the ATE</p> <p>24 policy, you understood that it was the intent of</p> <p>25 the purchasers of that policy to transfer all or</p>

Conducted on July 29, 2021

<p>1 substantially all of the assets of CDO Fund, SOHC 2 and HFP to Sentinel as payment for that policy; 3 correct? 4 A I knew that -- 5 MS. SMITH: Objection to form. 6 THE WITNESS: I knew that there was a 7 premium that was required and regulated by CIMA, 8 and I know that that had been contemplated as a 9 way to pay that premium. 10 BY MR. CLUBOK: 11 Q And how was that premium set? 12 A I wasn't involved in those 13 conversations. 14 Q Who set that premium? 15 A From my understanding, the -- the level 16 of the premium was ultimately set by CIMA. 17 Q How was it initially set? 18 A I was not involved in any of those 19 conversations, so I don't know. 20 Q You have no idea how the premium to pay 21 for this ATE policy that was your idea was 22 initially set? 23 A No. 24 Q You do know that before the actual 25 dollar amount was settled on for what the premium</p>	<p>145 1 to be; correct? 2 A I was involved -- 3 MS. SMITH: Objection to form. 4 THE WITNESS: I was involved in 5 discussions at the genesis of the idea, and then 6 it went through a formal process involving 7 numerous areas of the debtor. 8 BY MR. CLUBOK: 9 Q Right. But before that process ever 10 got to discussing it with CIMA, there was a 11 communication that you were included on that 12 talked about using all of the assets of SOHC, CDO 13 Fund and HFP to purchase the ATE policy; correct? 14 A I don't know. I'd have to see that 15 communication. Your question was: Was I involved 16 in discussions. Being copied on a communication 17 to me is not discussions. 18 Q Okay. You were aware that the intent, 19 prior to ever talking with CIMA, was to use all 20 the assets of SOHC, CDO Fund and SOHC (sic) to 21 purchase the ATE policy; correct? 22 A No. 23 MS. SMITH: Objection to form. 24 THE WITNESS: No, that's not true. I 25 didn't -- I believe that was in response to CIMA</p>
<p>146 1 would be, there was discussion involving -- 2 including you, that the premium would equal 3 substantially all, if not all of the assets of CDO 4 Fund, SOHC and HFP; correct? 5 MS. SMITH: Object to the form. 6 THE WITNESS: I knew that was the -- I 7 knew that was the idea and requirement to reach 8 the premium required by CIMA. 9 BY MR. CLUBOK: 10 Q So -- but before talking to CIMA, 11 before there was ever a discussion with CIMA about 12 what the premium would be, there was an idea to 13 calculate the total value of all the assets of CDO 14 Fund, SOHC and HFP and make that be the amount 15 that that would satisfy the premium that was going 16 to be set thereafter; fair? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I don't know. I wasn't 19 involved at that level. 20 BY MR. CLUBOK: 21 Q Well, you were involved in discussions 22 that occurred prior to ever talking to CIMA about 23 what the premium would actually be in which it was 24 discussed using all the assets of CDO Fund, SOHC 25 and HFP to satisfy whatever the premium turned out</p>	<p>147 1 saying what the premium had to be. But I, again, 2 was not involved in that level of discussion and 3 was not part of the process. 4 A From the very beginning -- strike that. 5 Well, let's be clear. You had the 6 initial idea of the ATE policy; correct? 7 THE WITNESS: As a concept, yes. 8 BY MR. CLUBOK: 9 Q And there were initial discussions that 10 ultimately stretched over weeks, if not months, 11 before the policy was executed; correct? 12 A That's my understanding. I was 13 involved at the beginning, and then it went 14 through a formal process I was not involved in. 15 Q But at some point, it came to your 16 attention that the idea was for the policy to be 17 paid for with all of the assets of SOHC, CDO Fund 18 and HFP; correct? 19 A Yes. But it's my understanding that 20 was in response to the premium set by CIMA. 21 Q You -- you -- 22 A I was not intimately involved in any of 23 those discussions with CIMA or otherwise. 24 Q You are saying as you sit here today, 25 that it is your understanding that CIMA first set</p>

Conducted on July 29, 2021

<p>149</p> <p>1 the premium, and after that, it just so happened</p> <p>2 that that premium exactly equalled all of the</p> <p>3 assets in HFP, CDO Fund and SOHC?</p> <p>4 A No, I'm telling you, you're asking if I</p> <p>5 was aware of how it happened. My understanding is</p> <p>6 that was the amount required for the premium. I</p> <p>7 wasn't involved in any of the discussions, none of</p> <p>8 the mechanics of setting how much, none of the</p> <p>9 mechanics of valuation, none of the aspects of</p> <p>10 transfer.</p> <p>11 That's all a formal process that was</p> <p>12 directed by compliance, and it went through all</p> <p>13 the proper channels.</p> <p>14 Q Okay. Then break down -- and please</p> <p>15 answer my questions I'm asking you.</p> <p>16 A I'm trying.</p> <p>17 Q And we'll do it in little pieces.</p> <p>18 Don't jump ahead, please.</p> <p>19 A Okay.</p> <p>20 Q True that at some point, it came to</p> <p>21 your attention that the idea --</p> <p>22 A Sorry.</p> <p>23 Q Let me strike that. I'll start over.</p> <p>24 A Okay. Sorry.</p> <p>25 Q At some point, it came to your</p>	<p>151</p> <p>1 A I have no idea.</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q What's that?</p> <p>5 A I have no --</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 THE WITNESS: I'm sorry, I have no idea</p> <p>8 as to the order. I just simply wasn't involved.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And -- and -- but you were the owner at</p> <p>11 the time -- 30 percent beneficial owner of</p> <p>12 Sentinel; correct?</p> <p>13 A No, entities related to me were. I was</p> <p>14 not.</p> <p>15 Q Okay. But you -- right, entities</p> <p>16 related to you had the 30 percent beneficial</p> <p>17 ownership of Sentinel at the time the ATE policy</p> <p>18 was issued; correct?</p> <p>19 A Correct.</p> <p>20 Q And going back to this Exhibit 50,</p> <p>21 Mr. Bowman on the first page of Exhibit 50 at the</p> <p>22 bottom asked if Mr. Sevilla could confirm if he</p> <p>23 would like to pass along the beneficial ownership</p> <p>24 information they had on file for Sentinel Re</p> <p>25 Holders.</p>
<p>150</p> <p>1 attention that the idea was for the policy to be</p> <p>2 paid for with all of the assets that remained at</p> <p>3 SOHC, CDO Fund and HFP; correct?</p> <p>4 A Anecdotally --</p> <p>5 MS. SMITH: Objection, asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: Anecdotally, yes.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And you learned of that intention prior</p> <p>10 to the premium price being approved by CIMA;</p> <p>11 correct?</p> <p>12 A I have no idea because I don't know</p> <p>13 when the premium price was set by CIMA because I</p> <p>14 wasn't involved.</p> <p>15 Q Okay. So when you said earlier that it</p> <p>16 was your understanding that the amount paid for</p> <p>17 the premium was -- okay. You don't -- so let me</p> <p>18 ask it this way: You are saying, as you sit here</p> <p>19 today, you have no idea whether or not -- first,</p> <p>20 it was determined that all of the assets from HFP,</p> <p>21 CDO Fund and SOHC would be used or first it was</p> <p>22 determined here's the premium price and now let's</p> <p>23 see what we need to satisfy that premium price.</p> <p>24 As you sit here today, you don't know</p> <p>25 the order of those two events?</p>	<p>152</p> <p>1 Do you see that?</p> <p>2 MS. SMITH: Objection to form. That</p> <p>3 misread that quote.</p> <p>4 THE WITNESS: Yeah. And what I see is</p> <p>5 "Hi, Big JP. Can you please confirm if you would</p> <p>6 like us to pass along the beneficial owner</p> <p>7 information that we have on file for Sentinel Re</p> <p>8 Limited for all the AO that we have on file for</p> <p>9 that investor."</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Right. And Mr. Sevilla then tells him</p> <p>12 "Just the beneficial owner, please." Correct?</p> <p>13 A And he says, "Thanks. Yes, correct."</p> <p>14 Q And then Mr. Bowen has an email at the</p> <p>15 top, with an attachment that says, "Hi, JP.</p> <p>16 Please see the attached beneficial ownership</p> <p>17 information for Sentinel Re Holdings Limited."</p> <p>18 Do you see that?</p> <p>19 A I do.</p> <p>20 Q And I'm going to ask you to turn and</p> <p>21 look at Exhibit 26 --</p> <p>22 A Okay.</p> <p>23 Q -- which I will tell you is the</p> <p>24 attachment --</p> <p>25 A Okay. I don't have 26, I don't</p>

Conducted on July 29, 2021

<p>153</p> <p>1 believe. Let me see.</p> <p>2 Q You should.</p> <p>3 A I think I do. Sorry. Yes, I have it.</p> <p>4 May I open it now?</p> <p>5 Q Yeah, if you could open it, please.</p> <p>6 And while you're opening it, I will represent that</p> <p>7 Exhibit 26 was attached to Exhibit 50 in the</p> <p>8 original email.</p> <p>9 And Exhibit 26 shows at the top, "The</p> <p>10 fund, Multi Strat Credit Fund, with an investor</p> <p>11 Sentinel Reinsurance."</p> <p>12 Do you see that?</p> <p>13 A Investor Sentinel Reinsurance Limited,</p> <p>14 yes.</p> <p>15 Q And it talks about the beneficial</p> <p>16 owners of Sentinel Reinsurance being 70 percent</p> <p>17 Patton Limited and 30 percent Minutes Limited;</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q And, in turn, under Patton, it has the</p> <p>21 breakdown of various beneficial ownerships. But</p> <p>22 the only individual identified is James Dondero.</p> <p>23 Do you see that?</p> <p>24 A I do.</p> <p>25 Q And then with respect to the Mimic</p>	<p>155</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 Answered.</p> <p>3 THE WITNESS: I can't say whether it is</p> <p>4 or isn't without the documents.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q My question is -- my simple question is</p> <p>7 whether you can say it isn't.</p> <p>8 Do you -- as you sit here today,</p> <p>9 looking at this, do you -- do you know any reason</p> <p>10 why this would be inaccurate?</p> <p>11 A Without the documents, I cannot say</p> <p>12 it's inaccurate.</p> <p>13 Q What further documents would you need</p> <p>14 to know whether or not this is accurate?</p> <p>15 A Well, I would have to see the documents</p> <p>16 of all these entities.</p> <p>17 Q Okay. Did you ever contribute capital</p> <p>18 to Sentinel?</p> <p>19 A Excuse me?</p> <p>20 Q Did you ever contribute any capital to</p> <p>21 Sentinel?</p> <p>22 A Did I ever contribute any capital to</p> <p>23 Sentinel? No, I do not believe so.</p> <p>24 Q Did you ever -- unless -- and when I</p> <p>25 say Sentinel, I mean Sentinel Reinsurance Limited.</p>
<p>154</p> <p>1 Holdings it says, 100 beneficial ownership,</p> <p>2 Montage Holding Limited which, in turn,</p> <p>3 100 percent beneficial ownership AHL Holdings LP,</p> <p>4 which, in turn, has 99 percent beneficial</p> <p>5 ownership, Elderflower Limited, which, in turn, is</p> <p>6 100 percent beneficial ownership, Scott Ellington,</p> <p>7 you. Correct?</p> <p>8 A I see that, yes.</p> <p>9 Q And does that -- seeing this, does that</p> <p>10 confirm that at the time of the ATE policy, you</p> <p>11 had close to or approximately 30 percent</p> <p>12 beneficial ownership ultimately in Sentinel?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: That's what this document</p> <p>15 seems to suggest. But I don't know where this</p> <p>16 information came from to SEI. I don't know.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Do you have any reason to believe that</p> <p>19 it's inaccurate?</p> <p>20 A I'd have to see the org chart at the</p> <p>21 time that this was generated. I just don't</p> <p>22 remember.</p> <p>23 Q Do you -- as you sit here today, do you</p> <p>24 have any reason to believe that this would be</p> <p>25 inaccurate information?</p>	<p>156</p> <p>1 Did you ever put any investment or</p> <p>2 funds into Sentinel Reinsurance Limited?</p> <p>3 A I don't know.</p> <p>4 Q You don't know?</p> <p>5 A I don't know. It could have been</p> <p>6 capitalized in a way that I -- I personally did</p> <p>7 not, no.</p> <p>8 Q Let's look at what's been marked as</p> <p>9 Exhibit 77.</p> <p>10 MR. CLUBOK: And Nate, when I call</p> <p>11 these out, I know Mr. Ellington's got a hard copy,</p> <p>12 but can you also put it up on the screen to make</p> <p>13 it easy. We'll see it both ways.</p> <p>14 REMOTE TECHNICIAN: Yes, sir. That was</p> <p>15 77?</p> <p>16 MR. CLUBOK: Yes, tab four.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q This is a document that says, "Scott</p> <p>19 Ellington Schedule of Certain Cash and Investments</p> <p>20 and Accountant's Compilation Report, October 31st,</p> <p>21 2018." Do you see that?</p> <p>22 A I do.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q And the second page references an</p> <p>25 entity called Seville Dodge and Company; do you</p>

Conducted on July 29, 2021

<p>157</p> <p>1 see that?</p> <p>2 A I do.</p> <p>3 Q Who are they?</p> <p>4 A An accounting firm.</p> <p>5 Q And they're your accounting firm.</p> <p>6 A They assist along with outside counsel</p> <p>7 in tax preparation.</p> <p>8 Q Okay. And in the end of 2018, they</p> <p>9 compiled a schedule of certain cash and</p> <p>10 investments of you as of October 31st, 2018;</p> <p>11 correct?</p> <p>12 A That seems to be what 7359 is.</p> <p>13 Q Why did they do that?</p> <p>14 A I was applying for a Cayman banking</p> <p>15 license, and this was requested by CIMA.</p> <p>16 Q Okay. And so you had to make sure you</p> <p>17 provided accurate information to CIMA?</p> <p>18 A Yes.</p> <p>19 Q And did Sevilla -- do you trust that</p> <p>20 Sevilla accurately reported your cash and</p> <p>21 investments as of October 31st, 2018?</p> <p>22 A I trust that they --</p> <p>23 MS. SMITH: Object to form.</p> <p>24 THE WITNESS: -- did their best to</p> <p>25 accurately report, yes.</p>	<p>159</p> <p>1 other professionals did the valuation.</p> <p>2 Q Well, you caused this to be prepared so</p> <p>3 that you could submit it to CIMA to get a banking</p> <p>4 license; right?</p> <p>5 A At the request of CIMA, yes.</p> <p>6 Q Understood. And did you -- are you</p> <p>7 reasonably certain that it was accurate?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I -- I don't have</p> <p>10 enough -- I don't have enough expertise to</p> <p>11 understand these type of valuations. That's why I</p> <p>12 hire professionals to do it.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Yeah, but do you -- did you take care</p> <p>15 to ensure that you hired a professional that you</p> <p>16 can rely on and that you provided that</p> <p>17 professional with all the information reasonably</p> <p>18 necessary to be accurate to the best of your</p> <p>19 ability?</p> <p>20 A Myself or other -- those are other</p> <p>21 entities because I couldn't provide information on</p> <p>22 Sentinel. The independent directors would have to</p> <p>23 do that.</p> <p>24 Q Did you take any affirmative obligation</p> <p>25 to do everything reasonably possible to ensure</p>
<p>158</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q And on the second page it says,</p> <p>3 "Investment in Sentinel Reinsurance Limited</p> <p>4 11.8 million."</p> <p>5 Do you see that?</p> <p>6 A Yes, I do. And Sentinel Reinsurance</p> <p>7 Limited, yes.</p> <p>8 Q Right. And does that refresh your</p> <p>9 recollection that you invested 11.8 million in</p> <p>10 Sentinel Reinsurance Limited?</p> <p>11 A No, it does not. I don't -- I don't</p> <p>12 know what that's referencing.</p> <p>13 I never invested personally \$11 million</p> <p>14 in anything?</p> <p>15 Q Was that -- was that a valuation of</p> <p>16 your investment in Sentinel Reinsurance at the</p> <p>17 time?</p> <p>18 A That's what my belief is, yes.</p> <p>19 Q And what was -- where -- did you -- did</p> <p>20 you ensure that Sevilla Dodge and Company had</p> <p>21 accurate information so they could make an</p> <p>22 accurate representation of the value of your</p> <p>23 investment in Sentinel Reinsurance at the time?</p> <p>24 A Yes. But, I mean, I didn't provide any</p> <p>25 valuation to them. They -- I presume them or</p>	<p>160</p> <p>1 that the information that's set forth in Exhibit</p> <p>2 77 is as accurate as possible?</p> <p>3 A Yes, I provided any information I had</p> <p>4 access to and requested that other entities that</p> <p>5 were controlled by directors or others would</p> <p>6 provide the information to Sevilla Dodge.</p> <p>7 Q And to the best of your -- do you feel</p> <p>8 comfortable relying upon the work of Sevilla Dodge</p> <p>9 and Company as of the date of Exhibit 77 as</p> <p>10 reflected here?</p> <p>11 A They are a reputable accounting firm</p> <p>12 with highly trained professionals, so I relied on</p> <p>13 their expertise.</p> <p>14 Q And why would Matt DiOrio have a copy</p> <p>15 of this?</p> <p>16 A I don't know.</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Did you share this information</p> <p>20 intentionally with Matt DiOrio?</p> <p>21 A Not that I recall, no.</p> <p>22 Q Does -- as far as you know is Matt --</p> <p>23 when Matt DiOrio was at Highland, did he have any</p> <p>24 need, as far as you know, to have access to this</p> <p>25 document based on what you understood his job to</p>

Conducted on July 29, 2021

<p>1 be?</p> <p>2 A It may have been a function, but I</p> <p>3 don't know, I don't know why he would have it.</p> <p>4 Q Matt DiOrio at the time was reporting</p> <p>5 to you before you were terminated?</p> <p>6 A Yes.</p> <p>7 Q And you have no idea why this would</p> <p>8 have been found at his desk after he was</p> <p>9 terminated?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 THE WITNESS: No, I don't. I mean,</p> <p>12 this was generated four years ago, so any number</p> <p>13 of things could have happened over that period of</p> <p>14 time that I wasn't aware of.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Did you ever suggest any business to</p> <p>17 Sentinel -- strike that.</p> <p>18 Did you ever suggest to Sentinel that</p> <p>19 they engage in any particular business or issue</p> <p>20 any particular policy?</p> <p>21 A No.</p> <p>22 Q Did you give -- did you have anything</p> <p>23 whatsoever to do with Sentinel's decision-making</p> <p>24 on whether to or circumstances surrounding the</p> <p>25 issuance of any policy?</p>	<p>161</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Is it roughly half? Is it roughly a</p> <p>4 third?</p> <p>5 A I don't know.</p> <p>6 Q Yes, so Scott, let's take just one more</p> <p>7 beat before you --</p> <p>8 A It's okay. Sorry.</p> <p>9 Q I think you can assume that Ms. Smith</p> <p>10 will say "objection to form" to many questions.</p> <p>11 A Okay.</p> <p>12 Q So let her go ahead and say that if you</p> <p>13 can before you jump in, though I do appreciate</p> <p>14 that you are just trying to answer the questions,</p> <p>15 and I appreciate that.</p> <p>16 A Thank you. Sorry again to everyone.</p> <p>17 Q It's okay. Let's try one more time.</p> <p>18 As of 2018, you think it's reasonable</p> <p>19 to conclude that your net worth was approximately</p> <p>20 two-thirds -- strike that.</p> <p>21 As of November 2018, it's true that</p> <p>22 approximately two-thirds of your total net worth</p> <p>23 was your investment in Sentinel Reinsurance;</p> <p>24 correct?</p> <p>25 MS. SMITH: Objection to form.</p>
<p>162</p> <p>1 A No.</p> <p>2 Q Did Sentinel issue any other ATE</p> <p>3 policies ever, other than the one that was -- that</p> <p>4 was issued in connection with the UBS litigation?</p> <p>5 A Not that I'm aware of.</p> <p>6 Q How much does Sentinel have in --</p> <p>7 strike that.</p> <p>8 What's the value of your investment in</p> <p>9 Sentinel today, roughly?</p> <p>10 A I have no idea.</p> <p>11 Q Do you have any idea if it's 1 million</p> <p>12 or 100 million?</p> <p>13 A I certainly don't think it's</p> <p>14 100 million, but I don't know.</p> <p>15 Q Well, in 2018, your investment in</p> <p>16 Sentinel was roughly two-thirds of your cash and</p> <p>17 investments total; correct?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: According to this</p> <p>20 accounts, roll up of assets, yes.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q And today is your investment in</p> <p>23 Sentinel roughly two-thirds of your total net</p> <p>24 worth?</p> <p>25 A I don't know.</p>	<p>163</p> <p>1 THE WITNESS: According to this</p> <p>2 schedule of cash and investments, which I find it</p> <p>3 interesting there is no liabilities reflected here</p> <p>4 and then I don't know the valuation methodology</p> <p>5 used, but that's what this looks like.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q And this is the document that you</p> <p>8 trusted Sevilla Dodge and Company to do an</p> <p>9 accurate job of reporting to the CIMA authority;</p> <p>10 correct?</p> <p>11 A Yeah.</p> <p>12 Q Okay.</p> <p>13 A But, again, it's just -- its just a</p> <p>14 schedule of certain cash investments, and it</p> <p>15 doesn't reflect any liabilities.</p> <p>16 Q Yeah, it doesn't reflect liabilities.</p> <p>17 A I take net worth, I think the term</p> <p>18 "net" nets out liabilities.</p> <p>19 Q Ah, okay, fair enough. So as of</p> <p>20 November 2018, approximately two-thirds of your</p> <p>21 total assets were your investment in Sentinel</p> <p>22 Reinsurance; correct?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: According to this</p> <p>25 document, yes.</p>
	<p>164</p>

Conducted on July 29, 2021

<p>165</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Which you have no reason to dispute;</p> <p>3 correct?</p> <p>4 THE WITNESS: I have no reason to</p> <p>5 dispute.</p> <p>6 MR. CLUBOK: Objection to form.</p> <p>7 THE WITNESS: I have no reason to</p> <p>8 dispute, but I don't know the methodology used.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And as of today, do you have any idea</p> <p>11 whatsoever what the percentage of your total</p> <p>12 assets your investment of Sentinel Reinsurance</p> <p>13 constitutes?</p> <p>14 A No idea whatsoever.</p> <p>15 Q And when you say you have no idea</p> <p>16 whatsoever, you mean you don't know if it's one</p> <p>17 percent or 70 percent?</p> <p>18 A I don't, because this is the only time</p> <p>19 I've ever seen a reflection of valuation as to,</p> <p>20 quote, my portion of Sentinel.</p> <p>21 Q Have you ever received any dividends</p> <p>22 from Sentinel?</p> <p>23 A No.</p> <p>24 Q Do you know if Sentinel still has the</p> <p>25 assets that were transferred to it in August of</p>	<p>167</p> <p>1 Q When you had the idea to buy the ATE</p> <p>2 policy, did you ever discuss that purchase with</p> <p>3 any insurer other than Sentinel?</p> <p>4 A Did I? No.</p> <p>5 Q Are you aware of anyone at Highland</p> <p>6 ever trying to obtain an ATE policy with respect</p> <p>7 to the UBS litigation from any entity other than</p> <p>8 Sentinel?</p> <p>9 A No one at Highland that I'm aware of,</p> <p>10 no.</p> <p>11 Q Are you aware of anybody, a broker, a</p> <p>12 third party, anybody at all ever --</p> <p>13 A I recall -- I recall Beecher Carlson</p> <p>14 going to the market to see if an ATE policy could</p> <p>15 be achieved before it went to Sentinel.</p> <p>16 Q Who at Beecher Carlson did that?</p> <p>17 A I don't know their names. I've never</p> <p>18 spoken to them.</p> <p>19 Q And how did you learn about that?</p> <p>20 A Someone at the time told me. I don't</p> <p>21 remember who. Someone internally at Highland.</p> <p>22 Q And what did they tell you about those</p> <p>23 efforts?</p> <p>24 A That Beecher Carlson had put out, for</p> <p>25 lack of a better term, bids to other known</p>
<p>166</p> <p>1 2017 with respect to the ATE policy?</p> <p>2 A To my knowledge, they still have</p> <p>3 everything that was transferred to them.</p> <p>4 Q Do you believe that Sentinel could make</p> <p>5 good on the -- on at least -- strike that.</p> <p>6 Do you -- do you know whether -- do you</p> <p>7 know how much of the policy limit remains</p> <p>8 available on the ATE policy?</p> <p>9 A No.</p> <p>10 Q If something like 91 million remains</p> <p>11 available, do you know whether or not Sentinel has</p> <p>12 the financial ability to satisfy that?</p> <p>13 A No.</p> <p>14 Q Do you know whether or not Sentinel has</p> <p>15 the financial ability to satisfy \$50 million?</p> <p>16 A No.</p> <p>17 Q Do you know whether Sentinel has the</p> <p>18 financial ability to satisfy \$10 million?</p> <p>19 A No.</p> <p>20 Q Do you know anything whatsoever about</p> <p>21 whether or not Sentinel has the financial ability</p> <p>22 to satisfy any amount of liability it may have</p> <p>23 with respect to the ATE policy?</p> <p>24 A No, I don't have any transparency into</p> <p>25 Sentinel's balance sheet.</p>	<p>168</p> <p>1 reinsurers about an ATE policy.</p> <p>2 Q And...</p> <p>3 A That there were no takers or that the</p> <p>4 premium they wanted was even higher than what was</p> <p>5 being requested by CIMA.</p> <p>6 Q What was the ultimate premium requested</p> <p>7 by CIMA for the ATE policy?</p> <p>8 A I don't recall.</p> <p>9 Q Roughly.</p> <p>10 A I really don't recall.</p> <p>11 Q You do recall, though, that it</p> <p>12 ultimately matched exactly all of the assets that</p> <p>13 were then remaining at CDO Fund, SOHC, HFP;</p> <p>14 correct?</p> <p>15 A No.</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: No. As I stated many</p> <p>18 times before, I was not involved in the process at</p> <p>19 that point. I didn't know what the final outcome</p> <p>20 was.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Okay. But you understood that the</p> <p>23 ultimate premium was roughly equivalent to all of</p> <p>24 the then remaining assets of HFP, CDO Fund and</p> <p>25 SOHC; correct?</p>

Conducted on July 29, 2021

<p>169</p> <p>1 A No. I was --</p> <p>2 MS. SMITH: Object to form.</p> <p>3 THE WITNESS: I was aware it was a</p> <p>4 substantial portion, but I didn't know the final</p> <p>5 outcome.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Okay. You -- you came to be aware at</p> <p>8 some point that the ultimate premium for the ATE</p> <p>9 policy equalled a substantial portion of all of</p> <p>10 the remaining assets SOHC, HFP and CDO Fund;</p> <p>11 correct?</p> <p>12 A That was my general awareness, yes.</p> <p>13 Q And when you say "substantial portion"</p> <p>14 you mean more than 90 percent; correct?</p> <p>15 A I didn't know if it was 90 percent, but</p> <p>16 I knew it was more than, say, 70 percent.</p> <p>17 Q In fact, you were specifically -- it</p> <p>18 was specifically communicated to you at some point</p> <p>19 that it would be all of the assets; isn't that</p> <p>20 true?</p> <p>21 A I don't know --</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: I don't know if I</p> <p>24 specifically was communicated that to, no.</p> <p>25 BY MR. CLUBOK:</p>	<p>171</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you have any role in deciding who</p> <p>3 the directors of Sentinel would be?</p> <p>4 A None.</p> <p>5 Q Are you talking about -- well, let's</p> <p>6 start with the independent directors.</p> <p>7 You say you had absolutely no role in</p> <p>8 the identifying any independent directors; is that</p> <p>9 correct?</p> <p>10 A That's correct.</p> <p>11 Q Who made the decision about who would</p> <p>12 be the independent directors?</p> <p>13 A I don't know.</p> <p>14 Q Okay. But you did tell Matt DiOrio</p> <p>15 that he would be a nonindependent director for</p> <p>16 Sentinel; correct?</p> <p>17 A Yes.</p> <p>18 Q Why was he -- why did you make -- why</p> <p>19 did you cause Matt DiOrio to be a director?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Strike that. Why did you tell</p> <p>23 Mr. DiOrio he had to be a director of Sentinel?</p> <p>24 A I didn't tell him he had to be</p> <p>25 anything.</p>
<p>170</p> <p>1 Q And do you know if -- well -- and do</p> <p>2 you know if Beecher Carlson ever made an effort to</p> <p>3 offer those same assets to another insurer to see</p> <p>4 what kind of ATE policy it could get?</p> <p>5 A I don't know what --</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I don't know what Beecher</p> <p>8 Carlson did.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q You said that Beecher Carlson put out</p> <p>11 bids and got no takers. And that was all before</p> <p>12 you turned to Sentinel Reinsurance; is that</p> <p>13 correct?</p> <p>14 A That's my understanding. But again, I</p> <p>15 wasn't involved in the process at that point.</p> <p>16 Q And who set the price with Sentinel</p> <p>17 Reinsurance, as far as you know, for the policy?</p> <p>18 A What do you mean set the price?</p> <p>19 Q Fair enough. Who -- so -- well, we'll</p> <p>20 come back to that.</p> <p>21 MS. SMITH: Andy, it's about 1:15.</p> <p>22 Are you close to break time?</p> <p>23 MR. CLUBOK: Yeah, give me another ten</p> <p>24 minutes and we'll take a break.</p> <p>25</p>	<p>172</p> <p>1 Q Why did you tell him that you wanted</p> <p>2 him to be a director of Sentinel?</p> <p>3 A It was an opportunity that I thought</p> <p>4 fit his skill set. It was something that he had</p> <p>5 expressed an interest in learning. And my</p> <p>6 recollection is that CIMA said we needed to add</p> <p>7 more members to the board.</p> <p>8 Q Was Mr. DiOrio compensated for his role</p> <p>9 as director?</p> <p>10 A No.</p> <p>11 Q When did you learn that Matt DiOrio had</p> <p>12 resigned from the Sentinel board?</p> <p>13 A I don't know that I had learned he had</p> <p>14 resigned from the Sentinel board.</p> <p>15 Q Oh, did you know he resigned on</p> <p>16 June 25th, this year?</p> <p>17 A No.</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q So as far as you knew until I just said</p> <p>21 that, did you think he was still on the board?</p> <p>22 A I didn't know if he was on the board or</p> <p>23 not.</p> <p>24 Q Do you know Andrew Dean?</p> <p>25 A No.</p>

Conducted on July 29, 2021

<p>173</p> <p>1 Q Do you know Christopher Watler?</p> <p>2 A No.</p> <p>3 Q Do you know Lesley Thompson?</p> <p>4 A No.</p> <p>5 Q Do you know Dilip Masand?</p> <p>6 A Yes.</p> <p>7 Q Who is Dilip Masand?</p> <p>8 A He was a consultant that was retained</p> <p>9 by, I believe, Highland Capital Management LP.</p> <p>10 Q To do what in connection with the</p> <p>11 Sentinel?</p> <p>12 A I don't know that he was retained by</p> <p>13 Highland Capital Management to do anything with</p> <p>14 Sentinel.</p> <p>15 Q He was, though, named as a director for</p> <p>16 Sentinel; correct?</p> <p>17 A I believe so, yes.</p> <p>18 Q And that was your decision; correct?</p> <p>19 A I do not think that was my decision,</p> <p>20 no.</p> <p>21 Q You suggested him as a director.</p> <p>22 A I suggested him as a potential</p> <p>23 director, yes.</p> <p>24 Q To whom?</p> <p>25 A To Mr. DiOrio and I believe to</p>	<p>175</p> <p>1 A You broke --</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 THE WITNESS: You broke up, Andy. I'm</p> <p>4 sorry.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Do you know who Jan Neveril is?</p> <p>7 A No, I do not.</p> <p>8 Q I don't know if Jan is a man or woman,</p> <p>9 but -- or is that Jan?</p> <p>10 A That could possibly be Jan.</p> <p>11 Q Oh, someone named J-A-N Neveril, you</p> <p>12 believe that may be Jan?</p> <p>13 A Potentially. I never knew his surname</p> <p>14 or her surname.</p> <p>15 Q Was it -- was Jan a man or a woman?</p> <p>16 A Jan was a man?</p> <p>17 Q So -- and Jan -- was Jan Neveril still</p> <p>18 a director during that bankruptcy matter?</p> <p>19 A As far as I know, yes.</p> <p>20 Q Do you know if Jan is still on the</p> <p>21 board?</p> <p>22 A I do not.</p> <p>23 Q Did you know that Matt DiOrio</p> <p>24 recommended Jan?</p> <p>25 A No, I have -- I have no idea who</p>
<p>174</p> <p>1 Mr. Dondero, but I don't recall doing that.</p> <p>2 Q You told --</p> <p>3 A But I could have, possibly.</p> <p>4 Q You told Mr. Dondero about your</p> <p>5 recommendations to make Mr. Masand and Mr. DiOrio</p> <p>6 directors of Sentinel; correct?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And he -- he could have said no if he</p> <p>10 had wanted to; right?</p> <p>11 A Yeah, he could have said no if he</p> <p>12 wanted to, but it's not his decision of who became</p> <p>13 the directors; it's the other -- it's the</p> <p>14 independent directors that approved. And CIMA has</p> <p>15 to approve each individual director. So</p> <p>16 Mr. Dondero's vote of "yes" or "no" is not the</p> <p>17 ultimate arbiter.</p> <p>18 Q You -- you asked DiOrio and Sevilla to</p> <p>19 identify new board members; is that correct?</p> <p>20 A At what time period?</p> <p>21 Q Some point prior to the bankruptcy.</p> <p>22 A No.</p> <p>23 Q Well, then, you asked DiOrio and</p> <p>24 Sevilla to work together to identify directors</p> <p>25 like Mr. Neveril?</p>	<p>176</p> <p>1 recommended Jan.</p> <p>2 Q What about Damien Austin?</p> <p>3 A I don't know who that is.</p> <p>4 Q Casey McDonald?</p> <p>5 A Don't know who that is?</p> <p>6 Q Wade Kenny?</p> <p>7 A Don't know who that is.</p> <p>8 Q Okay.</p> <p>9 MR. CLUBOK: Why don't we take a break.</p> <p>10 THE VIDEOGRAPHER: We're going -- we're</p> <p>11 going off the record at 2:18 -- 2:19 p.m. eastern</p> <p>12 time.</p> <p>13 MR. CLUBOK: Okay.</p> <p>14 (Lunch Recess taken 2:19 p.m. to 3:16</p> <p>15 p.m.)</p> <p>16 THE VIDEOGRAPHER: Am I going on the</p> <p>17 record, counsel, or waiting...</p> <p>18 MR. CLUBOK: We don't need it</p> <p>19 videotaped. We'll just -- the court reporter, you</p> <p>20 can take this following thing down and we are not</p> <p>21 going to count it on the videotape so go ahead --</p> <p>22 and court reporter, if you don't mind, you can go</p> <p>23 on the record. Ms. Smith will make her statement</p> <p>24 and I will respond, and then we'll resume the</p> <p>25 deposition.</p>

Conducted on July 29, 2021

<p>1 Is that okay, Lisa? Tell us when 2 you're ready. 3 Go ahead, Ms. Smith. Make your 4 statement. 5 MS. SMITH: I understand that -- I 6 learned on the break that during the course of 7 this deposition, which is supposed to be a highly 8 confidential deposition, I learned on the break 9 that information that Mr. Ellington had disclosed 10 during his deposition in response to direct 11 questions from Mr. Clubok has been leaked to a 12 third party, who is not subject to a 13 confidentiality order or confidentiality 14 agreement. 15 And I want -- I want to go on the 16 record that his -- it appears that his 17 girlfriend's address or his father's address was 18 leaked to a third party when it is supposed to be 19 highly confidential. 20 MR. CLUBOK: All right. And Ms. Smith, 21 you know that that so-called recitation of the 22 facts leaves out some very important information 23 and paints a very distorted picture because you've 24 left out material information. Specifically -- 25 MS. SMITH: Well, I'm not being deposed</p>	<p>177 1 are claiming is supposedly highly confidential, 2 which by the way had never been designated highly 3 confidential at all, so that's also false, there 4 was a portion -- a very small portion of this 5 deposition that was designated highly 6 confidential, that was, as you know, in connection 7 with information that was supposedly subject to 8 some confidentiality agreement. 9 MS. SMITH: Are you saying, Mr. Clubok, 10 that the depositions that have been held in this 11 case are not confidential? 12 MR. CLUBOK: I asked you not to 13 interrupt me anymore than I refrained from 14 interrupting you, because the court reporter can 15 only get us one at a time. 16 So this deposition is going forward. 17 There is a protective order that governs the 18 treatment. There is certain aspects that can be 19 designated as "highly confidential." You made a 20 point of designating a particular portion as 21 highly confidential. 22 The address where Mr. Ellington lives 23 or currently is living is certainly not something 24 that we are not permitted to use if we need to 25 serve him in this matter or if we need to serve</p> <p>179</p>
<p>1 here, Mr. Clubok. 2 MR. CLUBOK: Right. So specifically in 3 response to that, the issue here that we're 4 talking about is that over a month ago, we talked 5 about -- we are trying to serve Mr. Ellington, as 6 you know, in connection with proceedings that are 7 going on in New York. 8 Over a month ago, I asked you to tell 9 us -- to communicate with us whether or not 10 Mr. Ellington would accept service or not. 11 You promised -- you promised to get 12 that information for me. We asked you repeatedly 13 since then, you never did. Mr. Ellington came 14 back to the States. 15 You apparently, as of the time of this 16 deposition, you still had not asked him. 17 I asked again for you to tell me about 18 this. You -- you continued to refuse until just 19 moments ago, you finally told me, even though I'd 20 asked, frankly, that you tell me at the beginning 21 of the lunch break rather than waiting till 15 22 minutes past the lunch break, that you are not 23 going to accept service and you are going to make 24 us try to serve Mr. Ellington with process. 25 Now, the specific information that you</p>	<p>178 1 him in connection with other matters. You moved 2 the court to limit the use of this deposition to 3 just this matter, and that was denied. 4 So we can -- you know, we have no 5 interest in doing what we had to do before. As 6 you know, Mr. Ellington dodged service for a long 7 period of time right up until the point where it 8 finally was accepted in connection with this 9 matter. That seems to be a pattern or practice 10 that Mr. Ellington apparently -- he's sitting 11 right here. 12 We asked for you all to voluntarily 13 accept service. You just disclosed to me after a 14 month of me asking that he apparently will not. 15 And so if knowing the address where he lives 16 allows us to serve him potentially -- I don't how 17 many efforts it will take or how much he'll dodge 18 it. I hope he does not. I hope you'll advise him 19 of his obligation. 20 By the way, Baker MacKenzie is on this 21 call, too. I hope everyone has advised their 22 clients about the obligations to not intentionally 23 dodge service. And, you know, but we are going to 24 have to, we have no choice that, and I told you 25 this a month ago, if he didn't voluntarily agree</p> <p>180</p>

Conducted on July 29, 2021

<p>181</p> <p>1 to accept service, we have no choice but to try to</p> <p>2 affect service through proper means. And then we</p> <p>3 will certainly pursue our rights for the cost and</p> <p>4 expense of repeated efforts to dodge service, if</p> <p>5 that's what happens again in this case or in any</p> <p>6 matter like it happened in this case.</p> <p>7 Anyway, we've made our comments. You</p> <p>8 are welcome to make as many comments as you want</p> <p>9 to or I told you you could use this deposition or</p> <p>10 this court reporter's time, if you need to make</p> <p>11 it. But I also, by the way, said I couldn't stop</p> <p>12 you, but I think this is wholly inappropriate to</p> <p>13 be using a court reporter to try to make some</p> <p>14 record, particularly given the recitation that you</p> <p>15 made at the beginning to try to paint an -- I</p> <p>16 think, misleadingly incomplete light.</p> <p>17 Go ahead, Ms. Smith.</p> <p>18 MS. SMITH: Well, in response,</p> <p>19 Mr. Ellington has testified in unrelated to this</p> <p>20 matter but in today's deposition, that he had no</p> <p>21 email service while he was in Africa and that he</p> <p>22 has been back in the country approximately 36 --</p> <p>23 30 to 36 hours.</p> <p>24 So as for repeatedly dodging service,</p> <p>25 he has not done that.</p>	<p>183</p> <p>1 MR. CLUBOK: Well, in any event, I</p> <p>2 think we have sufficiently covered the waterfront</p> <p>3 on this issue. And let's conclude this portion of</p> <p>4 the transcript. And we'll take a -- we'll take a</p> <p>5 one-minute break and I'll resume.</p> <p>6 --- (Off-record discussion)</p> <p>7 (Recess taken 3:23 p.m. to 3:25 p.m.)</p> <p>8 THE VIDEOGRAPHER: Going back on the</p> <p>9 record at 3:25 p.m.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Mr. Ellington, what was -- so, I want</p> <p>12 to talk about another entity that we briefly</p> <p>13 mentioned, that's SAS. That's another entity that</p> <p>14 I believe that you directly or indirectly have the</p> <p>15 ultimate beneficial economic interest of roughly</p> <p>16 30 percent in; correct?</p> <p>17 A As long as we're talking about your</p> <p>18 characterization of SAS and related entities,</p> <p>19 subs, affiliates as the SAS umbrella, directly --</p> <p>20 or actually indirectly with entities associated</p> <p>21 with SAS.</p> <p>22 Q And ultimately all the economics of</p> <p>23 those SAS entities flow up to some -- either you</p> <p>24 directly or some trust or other entity that you've</p> <p>25 set up for your family's benefit; is that correct?</p>
<p>182</p> <p>1 This is a New York State matter. I am</p> <p>2 not his counsel of record in New York, like I told</p> <p>3 you at very beginning when you served me by snail</p> <p>4 mail on this.</p> <p>5 So I am fine with continuing with the</p> <p>6 deposition.</p> <p>7 MR. CLUBOK: Okay. And by the way,</p> <p>8 when I did serve you and you had not opened your</p> <p>9 mail, I told you at the time, of course I</p> <p>10 understood, we were very professional and</p> <p>11 courteous because you didn't -- and I understand</p> <p>12 it's Covid and so you may not have seen your mail,</p> <p>13 which we bent over backwards. You said you hadn't</p> <p>14 opened your mail. I said, okay, professional</p> <p>15 courtesy, so we will accept that representation</p> <p>16 and just pick up from here. And I never got a</p> <p>17 word back from you on this. We've asked you</p> <p>18 multiple times and you kept refusing to tell us</p> <p>19 about it until literally 15 minutes past our lunch</p> <p>20 break even at the very end here. And so those are</p> <p>21 the --</p> <p>22 MS. SMITH: I did not refuse,</p> <p>23 Mr. Clubok, and you know that.</p> <p>24 I had not had an opportunity to confer</p> <p>25 with my client.</p>	<p>184</p> <p>1 A I don't really know how they flow, but</p> <p>2 it would be something similar to that or generally</p> <p>3 like that, yes.</p> <p>4 Q Okay. And SAS, what does that stand</p> <p>5 for?</p> <p>6 A It stands for sword and shield.</p> <p>7 Q And who came up with that name?</p> <p>8 A Me.</p> <p>9 Q What does SAS do?</p> <p>10 A It provided litigation, financing</p> <p>11 and/or claim purchasing.</p> <p>12 Q And whose -- and by the way, it's also</p> <p>13 the case that Mr. Dondero, through entities that</p> <p>14 he controls, has a 70 percent beneficial economic</p> <p>15 interest in SAS; correct?</p> <p>16 A I don't know how Mr. Dondero holds any</p> <p>17 of those equitable positions.</p> <p>18 Q Right. But Mr. Dondero had the right</p> <p>19 to control 70 percent of the beneficial interest</p> <p>20 in SAS in however he decided to allocate it or</p> <p>21 hold it, etcetera; correct?</p> <p>22 A Yes, he could have done with those</p> <p>23 shares as he chose. I don't know if he donated</p> <p>24 them or what. I just don't know.</p> <p>25 Q And how are you involved in SAS?</p>

Conducted on July 29, 2021

<p>185</p> <p>1 A I was one of the -- other than being an</p> <p>2 indirect owner, for lack of a better term, with</p> <p>3 more affiliated entities related to me, I was the</p> <p>4 person that came up with the idea to form it and</p> <p>5 provided services through related entities to it.</p> <p>6 Q Well, you were the CEO of SAS; right?</p> <p>7 A I don't know that that was ever a</p> <p>8 title. I just -- I don't know.</p> <p>9 Q If somebody called SAS, that call would</p> <p>10 be routed to Highland Capital Management's phone</p> <p>11 system and it would go to you, isn't that true?</p> <p>12 A Not that I'm aware of, no. It may have</p> <p>13 been that at some point, but certainly not in</p> <p>14 years.</p> <p>15 Q Well, isn't it true that in the past,</p> <p>16 that somebody called SAS, it would be routed to</p> <p>17 HCM's office, and they could would press 1 and</p> <p>18 speak directly to you?</p> <p>19 A Potentially. I just don't remember</p> <p>20 that being the case.</p> <p>21 Q And SAS used to share a phone number</p> <p>22 with HCM?</p> <p>23 A No.</p> <p>24 Q Did SAS have its own bank accounts?</p> <p>25 A Yes.</p>	<p>187</p> <p>1 A Yes, I know Summit Management.</p> <p>2 Q What's Summit Management?</p> <p>3 A I believe they are a Cayman-based</p> <p>4 fiduciary services company.</p> <p>5 Q And they provide directors for the</p> <p>6 entities through which you own SAS or portions of</p> <p>7 SAS and Sentinel; is that right?</p> <p>8 A I know they had in the past. I don't</p> <p>9 know if they are still the directors or not.</p> <p>10 Q Is SAS a client of Skyview?</p> <p>11 A No, not to my knowledge.</p> <p>12 Q Why would HCM employees ever work for</p> <p>13 SAS?</p> <p>14 A There was --</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: There was a culture that</p> <p>17 existed before my tenure with Highland where</p> <p>18 business ideas would be incubated and/or services</p> <p>19 provided by Highland employees, and if those</p> <p>20 various businesses ever got to a point of</p> <p>21 substance and/or stability to stand on other own,</p> <p>22 they would be spun out and the employees of</p> <p>23 Highland would usually go and work for that new</p> <p>24 entity, and there are several examples of that.</p> <p>25 BY MR. CLUBOK:</p>
<p>186</p> <p>1 Q And your sister Marcia Maslow worked</p> <p>2 for SAS?</p> <p>3 A No.</p> <p>4 Q Isn't it true she provided project</p> <p>5 management consulting services?</p> <p>6 A Yes. She provided some IT setup of --</p> <p>7 of case management tracking devices.</p> <p>8 Q So she was paid by SAS for that work?</p> <p>9 A Yes.</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 THE WITNESS: The consulting firm she</p> <p>12 works for was paid, yes.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q You still have access to your SAS</p> <p>15 management.com email?</p> <p>16 A No.</p> <p>17 Q If we emailed to sellington at</p> <p>18 sasgmt.com today, would it go through?</p> <p>19 A I have no idea.</p> <p>20 Q Do you know the directors of SAS?</p> <p>21 A No, I don't.</p> <p>22 Q Do you know who David Eggleshaw is or</p> <p>23 John Collier (?)</p> <p>24 A No.</p> <p>25 Q Do you know Summit Management Limited?</p>	<p>188</p> <p>1 Q Did you ever get any distribution from</p> <p>2 SAS?</p> <p>3 A No.</p> <p>4 Q Have you ever gotten any payments from</p> <p>5 SAS at all?</p> <p>6 A No, other than expense reimbursement,</p> <p>7 no.</p> <p>8 Q Expense reimbursement?</p> <p>9 A Yes.</p> <p>10 Q For what?</p> <p>11 A Where there would be marketing costs</p> <p>12 and otherwise. I mean, somebody has to be an</p> <p>13 individual that pays, and very often that would be</p> <p>14 me.</p> <p>15 Q What's the rough magnitude of that</p> <p>16 expense or reimbursement?</p> <p>17 A I have no idea. You're talking about</p> <p>18 12 -- 12 plus years.</p> <p>19 Q You're saying you haven't gotten any</p> <p>20 expense reimbursement for SAS in 12 plus years?</p> <p>21 A You're asking for --</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: Sorry, Frances. My</p> <p>24 apologies.</p> <p>25 MS. SMITH: Object to form.</p>

Conducted on July 29, 2021

<p>189</p> <p>1 THE WITNESS: You are asking me the</p> <p>2 magnitude of that. I wouldn't know how to gauge</p> <p>3 that over an aggregate of 12 plus years.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q How about in the last three years?</p> <p>6 A No idea.</p> <p>7 Q Is it tens of thousands, ones of</p> <p>8 thousands, hundreds of thousands, millions?</p> <p>9 A I would say you are probably in tens of</p> <p>10 thousands to low hundreds of thousands.</p> <p>11 Q For what?</p> <p>12 A Travel. Hotel rooms. I would pay for</p> <p>13 any and every one professional and otherwise that</p> <p>14 were conducting business on behalf of SAS.</p> <p>15 Q What's the relationship between SAS</p> <p>16 management and SAS asset recovery.</p> <p>17 A I'd have to look at an org chart.</p> <p>18 Q What's the relationship between SAS and</p> <p>19 Sentinel?</p> <p>20 A There is no direct relationship.</p> <p>21 Q But they have a common owner; correct?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 THE WITNESS: Again, I don't know how</p> <p>24 Mr. Dondero owns them, either one of those</p> <p>25 businesses, so I don't know about the commonality.</p>	<p>191</p> <p>1 A Do I see where it says what? I'm</p> <p>2 sorry.</p> <p>3 Q See there is a circle at the top on the</p> <p>4 left that says USP1, and a circle on the top on</p> <p>5 the right that says USP2.</p> <p>6 A Yeah.</p> <p>7 MS. SMITH: Can we have the exhibit on</p> <p>8 the screen, please?</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Yeah, we do have the exhibit.</p> <p>11 Let's turn to -- oh, I'm sorry.</p> <p>12 It's --</p> <p>13 MR. CLUBOK: Do I have control here,</p> <p>14 Nate?</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q There is a org chart that I have up</p> <p>17 now. The Bates label ends in 85.</p> <p>18 On the top left, you can see USP1 and</p> <p>19 at the top right, you see USP2 in circles?</p> <p>20 A Yes.</p> <p>21 Q You recall that USP1 refers to you and</p> <p>22 USP2 refers to Mr. Dondero?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: I don't know -- I don't</p> <p>25 know what they refer to.</p>
<p>190</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q I'm going to hand you what's been</p> <p>3 marked as --</p> <p>4 Hold on a second.</p> <p>5 What's Sebastian Clarke?</p> <p>6 A I'd have to look at a org chart. I</p> <p>7 don't know.</p> <p>8 Q You have no idea what Sebastian Clarke</p> <p>9 is as you sit here today?</p> <p>10 A No, I know -- I remember the entity</p> <p>11 name, but I don't know what it's relative to.</p> <p>12 Q You owned Sebastian Clarke, didn't you?</p> <p>13 A I have no idea.</p> <p>14 Q Let's take a look at Exhibit 39, which</p> <p>15 is tab 8. You should have it in front of you.</p> <p>16 A I do. Can I go ahead and open it,</p> <p>17 Mr. Clubok?</p> <p>18 Q Please do.</p> <p>19 And I'm going to ask you to turn to</p> <p>20 page 3 of Exhibit 39, which is the offshore fund</p> <p>21 structure of SAS as of December 31st, 2017.</p> <p>22 Do you see that?</p> <p>23 A I see an org chart. I do.</p> <p>24 Q And do you see where it talks about USP</p> <p>25 (inaudible)?</p>	<p>192</p> <p>1 There is also a circle with four USPs,</p> <p>2 so I don't know what refers to each.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Do you see where it says Sebastian</p> <p>5 Clarke at the bottom right?</p> <p>6 A Bottom right? Yes, I do.</p> <p>7 Q Does that ring a bell for you what</p> <p>8 Sebastian Clarke is?</p> <p>9 A No idea what it is.</p> <p>10 Q There's a -- if you turn to the next</p> <p>11 page, there's some notes. Those are the -- do you</p> <p>12 see where it says on the -- on the page that ends</p> <p>13 in 85, AD1, AD2, AD3, AD4, 5?</p> <p>14 And then the next page, those are the,</p> <p>15 you know, footnotes basically that correspond to</p> <p>16 those; do you see that?</p> <p>17 A I do.</p> <p>18 It says it corresponds to slide 1, but</p> <p>19 I don't see what's labeled as slide 1.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q So if you look back at the slide that</p> <p>22 ends with 85, for example, you see where it says</p> <p>23 AD4 at the bottom left, next to Gray Royal</p> <p>24 Limited?</p> <p>25 A Yes.</p>

Conducted on July 29, 2021

<p>193</p> <p>1 Q And if you go to the next page, you see</p> <p>2 84, it says, "Sold from Sentinel structure in '17.</p> <p>3 Details needed."</p> <p>4 These notes appear to refer to this first</p> <p>5 slide?</p> <p>6 A Yes.</p> <p>7 Q Okay?</p> <p>8 A That seems to be -- that's the</p> <p>9 assumption, yes.</p> <p>10 Q Yep. So then I'm going to turn to the</p> <p>11 next page, the next slide, slide 2. And this is</p> <p>12 the -- CF -- it's entitled "CFC Restructure." And</p> <p>13 it says, "Sentinel structure as of December 31st,</p> <p>14 2017."</p> <p>15 Do you see that?</p> <p>16 A I do.</p> <p>17 Q And it -- and it, again, has a</p> <p>18 reference to USP1, and USP2.</p> <p>19 Do you see that?</p> <p>20 A On the CFC restructure?</p> <p>21 Q Yes.</p> <p>22 A Yes.</p> <p>23 Q When you see how USP1 goes down to an</p> <p>24 entity called Nimitz?</p> <p>25 A Yes, I do.</p>	<p>195</p> <p>1 for preliminary discussion purposes only."</p> <p>2 And it references Nimitz with a</p> <p>3 30 percent value and with 9 percent vote, and</p> <p>4 Patton with 70 percent value, 91 percent vote</p> <p>5 above Sentinel Holdings Limited.</p> <p>6 Do you see that?</p> <p>7 A I see that line.</p> <p>8 Q And we showed you earlier the document</p> <p>9 that showed that Nimitz referred to your</p> <p>10 beneficial owner of about 30 percent, whereas</p> <p>11 Patton referred to Mr. Dondero's ownership of</p> <p>12 about 70 percent?</p> <p>13 A I don't remember the document that you</p> <p>14 are referring to. But if you go further in the</p> <p>15 chart, it shows that there is foreign individuals</p> <p>16 who have specific values. And like I said, this</p> <p>17 is for a draft for preliminary discussions only.</p> <p>18 This looks to be a proposed restructuring. And</p> <p>19 furthermore, it's Mr. Dondero's international tax</p> <p>20 questions from Deloitte, so I don't know that this</p> <p>21 is relevant to me at all. And I don't know if</p> <p>22 this was something that was put together for</p> <p>23 discussion or actually got put in place. I have</p> <p>24 no idea.</p> <p>25 Q Okay. So listen to my question.</p>
<p>194</p> <p>1 Q At a 30 percent value?</p> <p>2 A Yes.</p> <p>3 Q And USP goes down ultimately to an</p> <p>4 entity called Patton, which has a 70 percent</p> <p>5 value?</p> <p>6 A I do.</p> <p>7 Q Although a 91 --</p> <p>8 MS. SMITH: Excuse me, Mr. Clubok. I</p> <p>9 don't want to interrupt you. But can you hold</p> <p>10 this up so that the whole thing shows. It looks</p> <p>11 like some of its cut off.</p> <p>12 MR. CLUBOK: No, it's not really cut</p> <p>13 off except the Bates number.</p> <p>14 A I can see -- I can see the whole thing</p> <p>15 on the hard copy.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Yeah, you have a hard copy. And,</p> <p>18 Ms. Smith, you should have a hard copy, too, or</p> <p>19 you certainly have these exhibits. We've used</p> <p>20 them in past depositions.</p> <p>21 So with respect to getting back to this</p> <p>22 exhibit, which, again, is Exhibit 39. And we are</p> <p>23 on the page that ends in Bates number 37. There</p> <p>24 is a chart that says, "CFC restructure, Sentinel</p> <p>25 structure as of 12/31/17." It is marked "Draft</p>	<p>196</p> <p>1 A Okay.</p> <p>2 Q Earlier today, I showed you a document</p> <p>3 that was passed around that showed you -- it</p> <p>4 showed Sentinel being held roughly 30 percent by</p> <p>5 Nimitz and 70 percent by Patton with the</p> <p>6 beneficial owners of each of those being</p> <p>7 respectively you and Mr. Dondero.</p> <p>8 Do you remember --</p> <p>9 A Can you refer to me what document that</p> <p>10 was, Mr. Clubok, because we've looked at, as far</p> <p>11 as I know, three exhibits.</p> <p>12 If you are referring to the chart</p> <p>13 prepared by SCI IC, again, I don't know where they</p> <p>14 got that information. And it may be a general</p> <p>15 summary, but it's not further reflected in this</p> <p>16 chart. Because if you get behind Nimitz, it is</p> <p>17 not 30 percent because there is a value that goes</p> <p>18 to each individual on both sides of the chart.</p> <p>19 And again, this is a proposed restructure, so I</p> <p>20 don't know if this was put in place or how it was</p> <p>21 handled because it is a conversation with Deloitte</p> <p>22 about Mr. Dondero, Dondero TY17 international</p> <p>23 questions.</p> <p>24 Q Yeah, you -- you are the hundred</p> <p>25 percent beneficial owner of Nimitz, which has a</p>

Conducted on July 29, 2021

<p>197</p> <p>1 roughly 30 percent value in Sentinel Holdings; 2 isn't that true. 3 A I have no idea what the structure 4 looked like as of 12/31/17 or now. 5 Q Yeah. You -- you say you have no idea 6 under a -- and I showed you previously Exhibit 26. 7 A Which again, is a summary from an 8 outside third party of what their records are. 9 It doesn't tell me that I'm the 10 30 percent owner of that. 11 Q Okay. And so you are claiming, as you 12 sit here today, you have no idea -- you have no 13 idea whether or not you're a 30 percent owner of 14 Sentinel through an entity called Nimitz? 15 A I have no idea as of the structure of 16 today, no. 17 Q In any event -- but you do know that 18 you're roughly a 30 percent beneficial owner of 19 Nimitz through whatever organizations have been 20 set up of -- in the Sentinel chain and in whatever 21 organizations, tax planning or otherwise, have 22 been set up in your personal life; correct? 23 A I think normally, that's my 24 understanding, yes. 25 Q And when you look at this chart, you</p>	<p>199</p> <p>1 A No, I did not. Again, I don't know 2 this was ever implemented. This, again, seems to 3 be something they're contemplating, especially 4 with the Sentinel slide 2, as you refer to it, 5 that's called restructure, meaning I think they're 6 proposing this as a structure. I have no idea if 7 it was put in place or not. 8 Q Did -- did Katie Irving ever work on 9 SAS matters? 10 A Yes. 11 Q Did Katie Irving ever work on Sentinel 12 matters? 13 A I don't think she worked on Sentinel 14 matters at all. 15 Q I'm going to ask you to look at Exhibit 16 28. 17 MR. CLUBOK: Which is tab 9, Nate. 18 BY MR. CLUBOK: 19 Q Exhibit 28 is an email with an 20 attachment that's entitled "SAS and Sentinel Final 21 Structure as of 9 April 2019". 22 And the email -- 23 A Can I open it, Mr. Clubok? 24 Q Yeah, please. When I call it out, if I 25 don't say it, that --</p>
<p>198</p> <p>1 say that you don't know whether or not the owners 2 of Sentinel that are reflectively identified as 3 30 percent and 70 percent refer ultimately to you 4 and Mr. Dondero. You have no idea? 5 A I don't know what -- I don't know what 6 this is other than a preliminary discussion 7 purposes, and I just happened to glance at the 8 parties involved in it, Paul Broadest and the rest 9 seem to all be Deloitte employees, and it's about 10 Mr. Dondero. I am not included in this 11 discussion, not CC'd on this discussion. Until 12 you showed this to me, I had never seen this, as 13 far as I know, in my life. 14 Q Yeah. And you've never seen in your 15 life anything that says that you ultimately own 16 30 percent of Sentinel through an entity called 17 Nimitz? 18 A Not that I recall. 19 MS. SMITH: Objection. Objection to 20 form. 21 THE WITNESS: Not that I recall. 22 BY MR. CLUBOK: 23 Q Did you know that you had roughly a 24 9 percent vote, even though you have a roughly 25 30 percent economic interest in Sentinel?</p>	<p>200</p> <p>1 A Okay. Okay. Sorry I just wanted to 2 make sure. 3 Q That's okay. I appreciate it. 4 So we will put up Exhibit 28, the first 5 page, please. 6 A Okay. 7 MR. CLUBOK: Which is behind tab 9, 8 Nate. 9 BY MR. CLUBOK: 10 Q And Exhibit 28 on the first page has an 11 email from Katie Irving to Stephen Beck, JP 12 Sevilla and Matt DiOrio, with subject "AB 13 Restructure Sentinel." 14 Do you see that? 15 A Invested do. 16 Q And Katie Irving writes to Steve Beck. 17 Do you know who Steve Beck is? 18 A I do know who Steve Beck is. 19 Q Who is he? 20 A Steve Beck is a tax attorney. 21 Q Who worked at Highland at the time? 22 A No, he's outside counsel. 23 Q Okay. In what firm? 24 A Nettles Collier. (?) 25 Q And Ms. Irving was writing to him about</p>

Conducted on July 29, 2021

<p>201</p> <p>1 the entity restructure and just saying that, 2 further to any liquidation discussion, the 3 Sentinel Reinsurance Limited regulator CIMA was 4 asking that the Sentinel structure be simplified. 5 And they specifically called out 6 various entities, including Nimitz and Patton. 7 Do you see that? 8 A Let's let me read. Yes, I see that, 9 along with other entities. 10 Q Yeah. And she says, "I believe we 11 discussed some of these liquidations last year." 12 A Yes. And from the two charts there's a 13 mixture of SAS-related entities and 14 Sentinel-related entities, too. 15 Q Right. From the charts, it's clear 16 that Sentinel and SAS are connected in some way; 17 correct? 18 A No, I think Ms. Irving is talking about 19 overall what has CIMA's asked for and her primary 20 responsibilities on the SAS platform. 21 Q Okay. She specifically talks about 22 responding to requests by the Sentinel Reinsurance 23 Limited regular in her email to Stephen Beck; 24 correct? 25 A Yes, I see that. But again, I don't </p>	<p>203</p> <p>1 BY MR. CLUBOK: 2 Q Yeah. My question is much simpler. 3 A Okay. 4 Q He is -- said that she had discussed 5 liquidations that CIMA specifically called out 6 with respect to Sentinel Reinsurance; isn't that 7 true? 8 "Hi Steve. Further to entity liquidation 9 discussions last year, the Sentinel Reinsurance 10 Limited regulator Cayman Islands Monetary 11 Authority, so they regulate that entity because it 12 is a regulated entity, which SAS is not, is asking 13 that the Sentinel structure be simplified. CIMA 14 specifically called out ..." [As read.] And then 15 she lists the specific entities. 16 Q Right. And that's all -- 17 A "Upon further discussion with Montage 18 Anthem Management." 19 Q Sorry, Mr. Ellington. I'm asking you 20 about the second paragraph. 21 And as you noted, CIMA regulates 22 Sentinel and not SAS; right? 23 A Correct. 24 Q And so this email is in furtherance of 25 responding to Sentinel's regulator about the </p>
<p>202</p> <p>1 know what that org chart looked like. There's -- 2 doesn't seem to be anything attached, other than 3 another attachment that says, "For Preliminary 4 Discussion Purposes Only," draft. 5 Q Right. And then she -- she towards -- 6 try to follow my questions, just answer my 7 question. 8 A Sure. 9 Q You said before that Ms. Irving had not 10 -- did not do work on Sentinel, as far as you 11 know? 12 A As far as I know, I don't know that she 13 did work on Sentinel. 14 Q And yet here is writing to Stephen Beck 15 specifically about Sentinel Reinsurance Limited in 16 the bottom email on page 28; correct? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I think she's discussing 19 all of CIMA's instructions with Steve Beck. And 20 then talks; about Montage Anthem and Mainstream 21 used to be CFC's Elderflower and Brave Holdings 22 which -- give me a second -- seemed to be related 23 to the SAS side, possibly describing to Steve Beck 24 part of the CFC restructuring, again, at CIMA's 25 request. </p>	<p>204</p> <p>1 Sentinel Reinsurance restructuring; correct? 2 A It is also in regards to Montage, 3 Elderflower, Brave -- 4 Q Yep. 5 A Anthem and Main Spring, which are on 6 the SAS structure, so it looks like CIMA had -- 7 had instructions to those. 8 Q I'm going to ask you, Mr. Ellington, 9 going forward, not to volunteer things like that 10 if I ask you a specific question. I may do 11 follow-up. And your lawyer may ask you about what 12 else this email covers. But my specific question 13 to you is this email is specifically begins with a 14 furtherance of liquidation discussions about 15 Sentinel that were apparently initiated by 16 Sentinel's regulator in the Caymans; isn't that 17 true. 18 A That's true. Maybe I'm mistaken. I 19 thought your question was the email's in regards 20 to, and that's not all it's in regards to. 21 Q I didn't say that's all it's in regards 22 to. I said -- 23 -- (overspeaking) -- 24 A Okay. Maybe I made a mistake. 25 Q And then Katie passes this e-mail on to </p>

Conducted on July 29, 2021

<p style="text-align: right;">205</p> <p>1 Sam Dawson. Sam Dawson was the person that you</p> <p>2 previously said was the lawyer who gave advice on</p> <p>3 Sentinel?</p> <p>4 A He gave advice on ATE policies on</p> <p>5 Sentinel, yes.</p> <p>6 Q And did he also give legal advice on</p> <p>7 SAS?</p> <p>8 A Yes, he did.</p> <p>9 Q So -- and who is Dylan? Someone who</p> <p>10 works with him?</p> <p>11 A Yeah, I don't know who Dylan is, but it</p> <p>12 seems from the e-mail address he works with Sam.</p> <p>13 Q Right. And Katie is asking to discuss,</p> <p>14 according to the attachments, SAS and Sentinel</p> <p>15 final structure as of 9 April 2019. Do you see</p> <p>16 that?</p> <p>17 A Discussion from legal perspective,</p> <p>18 I believe the impact of the GP structure, the</p> <p>19 (indiscernible) previously. I don't know what her</p> <p>20 nomenclature is there. "Understand option to move</p> <p>21 away from existing trust structure." Again, I</p> <p>22 don't know what that is, so I don't know what</p> <p>23 she's really asking here.</p> <p>24 Q Right. But her attachment that she</p> <p>25 sends is entitled "SAS and Sentinel Final</p>	<p style="text-align: right;">207</p> <p>1 30 percent for Nimitz above Sentinel Re and</p> <p>2 70 percent for Patton above Sentinel Re; correct?</p> <p>3 A Yes, it says 30 percent value, it says.</p> <p>4 I don't know if that means shares or something</p> <p>5 else.</p> <p>6 Q Right. And does this refresh -- and by</p> <p>7 -- who tasked Katie to do this work on behalf of</p> <p>8 Sentinel and SAS?</p> <p>9 A Again, I don't know whether she was t;</p> <p>10 tasked to do anything on behalf of Sentinel. But</p> <p>11 my assumption would be that the directors asked</p> <p>12 her to do this.</p> <p>13 Q The directors of what?</p> <p>14 A Probably the directors of both since,</p> <p>15 at least according to Katie, CIMA called out</p> <p>16 entities that are related to both.</p> <p>17 Q You think the independent directors</p> <p>18 asked Katie to do this for Sentinel and SAS?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: I said I don't know. I</p> <p>21 don't have any idea.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Did you expect Katie to respond to</p> <p>24 requests related to Sentinel?</p> <p>25 A No.</p>
<p style="text-align: right;">206</p> <p>1 Structure as of 9 April, 2019 PowerPoint;"</p> <p>2 correct?</p> <p>3 A Yeah, that's what that title says, yes.</p> <p>4 But it's not just -- this isn't Sentinel, it's</p> <p>5 also SAS structure as of 9th April, 2019. And I</p> <p>6 find it interesting that if it's a final</p> <p>7 structure, both are marked "draft."</p> <p>8 Q Yeah. As I said, she sends on two</p> <p>9 slides now with what looks to be compared to what</p> <p>10 we previously saw simplified structures for SAS</p> <p>11 and Sentinel.</p> <p>12 MS. SMITH: Objection --</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q And it says as of 9 April, 2019, at the</p> <p>15 bottom, it still says, "Draft for preliminary</p> <p>16 discussion purposes only;" correct?</p> <p>17 A On both slide 1 and 2 as you referred</p> <p>18 to them as, and they do seem in terms of a number</p> <p>19 of boxes more simplified.</p> <p>20 Q Right. And on slide 2, which says the</p> <p>21 Sentinel structure as at 9 April 2019, we now have</p> <p>22 USP1 having 99 percent of value, 9 percent of</p> <p>23 votes down through Nimitz simplified, these</p> <p>24 foreigners and other US partners are all out.</p> <p>25 We've now got a simplified structure that shows</p>	<p style="text-align: right;">208</p> <p>1 Q Was that -- she worked for you at the</p> <p>2 time; right?</p> <p>3 A Yes.</p> <p>4 Q Was she acting outside of her</p> <p>5 authority?</p> <p>6 THE WITNESS: No.</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Was she authorized to do work on behalf</p> <p>10 of Sentinel while she worked for you at Highland</p> <p>11 Capital Management?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I wouldn't authorize her</p> <p>14 to do work for Sentinel or not. That would be up</p> <p>15 to the directors.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q That's up to Sentinel -- but she -- her</p> <p>18 pay cheque at the time was coming from Highland</p> <p>19 Capital Management; right?</p> <p>20 A As far as I know, yes.</p> <p>21 Q And you were her supervisor; correct?</p> <p>22 A Correct.</p> <p>23 Q Did you authorize her during -- and</p> <p>24 this is during the work hour -- this is during the</p> <p>25 work day, 2:59 p.m. on a Wednesday, that she's</p>

Conducted on July 29, 2021

<p>209</p> <p>1 doing this work on restructuring Sentinel and SAS. 2 Do you see that? 3 A I do see that. 4 Q Is that something she was authorized to 5 do during her employment with HCM? 6 A To work on SAS, absolutely. To work on 7 Sentinel, I don't know that she is, because she 8 asked Sam and Dylan here about the GP structure 9 for these top coast previously. 10 Q Okay. 11 A It doesn't say Sentinel, it doesn't say 12 SAS. You need to also understand the accounts 13 structure. I don't know what she's referring to. 14 Q My question -- my question is: Was she 15 authorized to do work on company time for Sentinel 16 during April of 2019 while she was getting a pay 17 cheque from HCM and under your supervision? 18 A I didn't -- 19 MS. SMITH: Objection to form. 20 THE WITNESS: I didn't structure Ms. 21 Irving on what she worked on. 22 BY MR. CLUBOK: 23 Q If you go down to the -- to SAS, to the 24 SAS slide on the page that has the Bates number 25 125, you see in the bottom right, Sebastian Clarke</p>	<p>211</p> <p>1 A I don't remember working -- oh, yes, I 2 did -- I did work on some matters relative to that 3 entity. 4 Q What do you mean? 5 A Pardon me? 6 Q What do you mean you worked on some 7 matters relative to that entity? 8 A Meaning that I worked on matters 9 relative to that entity. 10 Q Were you paid for that work? 11 A No, I was not paid for that work. 12 Q Why would you do work for SAS Loan 13 Service Limited for no compensation? 14 A Because Mr. Dondero instructed me as 15 the person paying my pay check to continue 16 incubating this business and see if I could get it 17 to a specific gravity and robust enough that it 18 could stand on its own. 19 Q So Mr. Dondero specifically directed 20 your work on SAS Loan Services Limited? 21 A No, on SAS structure -- 22 MS. SMITH: Objection to form. 23 THE WITNESS: Sorry. On SAS structure 24 in general. 25 BY MR. CLUBOK:</p>
<p>210</p> <p>1 Limited is still there? 2 A Yes. Actually, it doesn't have a line 3 to it. So it's on the chart, there is no line 4 connecting it to Flagstone Management Limited. 5 Q Right. And that it just shows up there 6 in the bottom right in its own little box; right? 7 A Yes, it's in its own little box. 8 Q Do you have any idea what Sebastian 9 Clarke is based on this chart? 10 A No idea, no idea. 11 Q Do you know SAS R -- SAS AR Limited in 12 the left-most box or -- 13 A No. 14 Q -- central box? 15 A No, I don't. 16 Q Do you know SAS Loan Services limited, 17 what that is? 18 A I recall that that, I believe, was used 19 as a loan servicing entity for an engagement that 20 SAS had. 21 Q Is that something you established? 22 A I don't believe I established it. That 23 would have been done by Maples and Collier or 24 whoever counsel was at the time. 25 Q Did you have any role with that entity?</p>	<p>212</p> <p>1 Q Oh, I see. Mr. Dondero specifically 2 told you to work on the SAS structure to get it to 3 be profitable or in the money? 4 A See if it could be a standalone 5 business. 6 Q Did you achieve that? 7 A For a period of time, yes. 8 Q And what was that period of time? 9 A I would say from inception for about 10 the first four to five years. 11 Q Until when? 12 A Call it '14, '15. 13 Q And since then, it has not been a 14 successful standalone business? 15 MS. SMITH: Objection to form. 16 THE WITNESS: Since then, there has 17 been very little, if any, effort put onto this 18 platform, but-for managing legacy matters, which 19 I believe now there is only one. 20 BY MR. CLUBOK: 21 Q Did you ever recover any value from 22 SAS? 23 A I don't understand your question. 24 Q Did you ever make any money on SAS? 25 A Me personally?</p>

Conducted on July 29, 2021

<p>213</p> <p>1 Q Yeah.</p> <p>2 A No.</p> <p>3 Q Did you lose any money on SAS?</p> <p>4 A Me personally?</p> <p>5 Q Yeah.</p> <p>6 A No.</p> <p>7 Q Did Mr. Dondero make any money on SAS?</p> <p>8 A Not that I'm aware of.</p> <p>9 Q Did anybody make any money from SAS, as</p> <p>10 far as you're aware?</p> <p>11 A Outside counsel on a bunch of matters.</p> <p>12 Q Anybody else?</p> <p>13 A Not that I'm aware of, no.</p> <p>14 Q Do you know if Patton and Nimitz still</p> <p>15 exist today?</p> <p>16 A I don't know.</p> <p>17 Q Is Sentinel -- would Sentinel be</p> <p>18 considered a affiliate of Highland Capital</p> <p>19 Management?</p> <p>20 A No. An affiliate or non-affiliate is</p> <p>21 the sole decision of the Chief Compliance Officer</p> <p>22 Thomas Surgent, who, through date of inception of</p> <p>23 Sentinel, through my date of termination, formally</p> <p>24 declared is not an affiliate.</p> <p>25 Q What is the -- sorry, when was --</p>	<p>215</p> <p>1 Q Did you ever -- were you ever involved,</p> <p>2 ever, in any discussion about whether an entity</p> <p>3 was or was not properly characterized as an</p> <p>4 affiliate in connection with any Highland entity?</p> <p>5 A Compliance, Mr. Surgent and his staff</p> <p>6 and Mr. Surgent's predecessors would have asked</p> <p>7 questions when having ownership and other relevant</p> <p>8 information that they demanded and asked for.</p> <p>9 They may ask questions. Sometimes they didn't.</p> <p>10 And the determination was made.</p> <p>11 Q Other than compliance asking you</p> <p>12 questions, did you ever have any role whatsoever</p> <p>13 in assessing whether any entity was or was not an</p> <p>14 affiliate of another entity?</p> <p>15 A No and, again, my understanding is SEC</p> <p>16 regs and the RAA, I have no right to do so.</p> <p>17 MR. CLUBOK: I'm sorry, Nate, could we</p> <p>18 take this down? I'm not sure how to do that</p> <p>19 easily. Ah, thank you.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q So did you ever take a position during</p> <p>22 your tenure as general counsel of Highland as to</p> <p>23 whether or not any entity was or was not an</p> <p>24 affiliate of any other entity?</p> <p>25 A No, other than repeating what</p>
<p>214</p> <p>1 Sentinel was created in 2012; right?</p> <p>2 A Correct.</p> <p>3 Q And who was in charge of making a</p> <p>4 decision at that point as to whether or not</p> <p>5 Sentinel was an affiliate or not an affiliate?</p> <p>6 A I don't remember if it was Mr. Surgent</p> <p>7 as chief compliance officer yet or not. It may</p> <p>8 have been his predecessor, but I'm not certain on</p> <p>9 the date.</p> <p>10 Q And you're saying that the decision to</p> <p>11 identify -- well, let's start with Sentinel.</p> <p>12 As an affiliate or not an affiliate was</p> <p>13 solely the decision of the head of compliance?</p> <p>14 A Yes, that's the only person that makes</p> <p>15 that determination, and they don't have to answer</p> <p>16 to anyone in that determination, other than</p> <p>17 themselves.</p> <p>18 Q And does the general counsel have any</p> <p>19 role whatsoever in assessing whether an entity</p> <p>20 would be considered an affiliate for any purpose?</p> <p>21 A Zero.</p> <p>22 Q Did you ever weigh in in any way on</p> <p>23 whether any entity was or was not an affiliate</p> <p>24 with Highland?</p> <p>25 A No, and I had no right to.</p>	<p>216</p> <p>1 compliance's determination had been made when we</p> <p>2 inquired upon.</p> <p>3 Q Did you -- and sorry, your</p> <p>4 understanding of the relationship between Sentinel</p> <p>5 and HCM is that it's not an affiliate?</p> <p>6 MS. SMITH: I'm sorry, Andy. I'm</p> <p>7 sorry, you went out. I missed like three words of</p> <p>8 that when you turned your head. I'm sorry, I</p> <p>9 didn't hear the question.</p> <p>10 MR. CLUBOK: That's okay.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Mr. Ellington, did you have any</p> <p>13 understanding as to whether or not Sentinel could</p> <p>14 be considered an affiliate of either HCM or Jim</p> <p>15 Dondero?</p> <p>16 A Yes.</p> <p>17 Q And what was your understanding?</p> <p>18 A My understanding is it was not an</p> <p>19 affiliate of HCM.</p> <p>20 I don't know if a determination was</p> <p>21 made it was affiliate of Jim Dondero. And that</p> <p>22 determination was made by the chief compliance</p> <p>23 officer and continued to be the same determination</p> <p>24 through my entire tenure.</p> <p>25 Q And was there a determination as to</p>

Conducted on July 29, 2021

<p>1 whether or not Sentinel would be considered an 2 affiliate of you ever made? 3 A I don't know. I don't know if that 4 announcement was done or if it was required to be 5 done or not. 6 Q As general counsel, did you ever weigh 7 in on whether or not a transaction should be 8 considered a related party transaction? 9 A No, that's solely a compliance 10 function. 11 Q As general counsel, did you ever 12 analyze for any transaction whether it constituted 13 a fraudulent transfer? 14 MS. SMITH: Objection. 15 THE WITNESS: For any transaction in 16 what context? 17 BY MR. CLUBOK: 18 Q In the context of a transaction. Prior 19 to -- let's say, prior to it being made, did you 20 ever do an analysis to determine or try to 21 determine whether or not a proposed transaction 22 would constitute a fraudulent transfer? 23 A No. Again, that would be a compliance 24 function. 25 Q Okay. So in the entire history of the</p>	<p>217 219 1 the assessment, and then we can talk about what 2 you did or didn't do when you made your 3 assessment. And I'm not asking you whether it was 4 relevant right just now. So please answer the 5 question that I ask. 6 So in the entire history of the time 7 you worked at Highland Capital, was there ever a 8 transaction that prior to its occurrence, you, as 9 general counsel, made an assessment as to whether 10 or not that transaction could constitute a 11 fraudulent transfer? 12 A Yes. 13 Q And did you make such an assessment in 14 connection with the purchase of the ATE policy? 15 A No. 16 Q Did you endeavor to analyze the 17 transaction that resulted in the purchase of the 18 ATE policy under a -- sorry, strike. Let me start 19 again. 20 Did you ever endeavor to analyze in any 21 way the transaction that resulted in the purchase 22 of the ATE policy that we've been discussing to 23 determine whether or not that transaction could be 24 characterized as a fraudulent transfer? 25 MS. SMITH: I'm going to caution you</p>
<p>218 1 time that you worked at Highland Capital did you 2 ever, prior to a -- any transaction occurring, 3 make an assessment as to whether or not that 4 transaction could be characterized as a fraudulent 5 transfer? 6 A Yeah. But my assessment is irrelevant 7 because it is compliance's role and compliance's 8 sole purvey to make that determination, not mine. 9 Q Okay. So let's break that down. 10 You are saying you did make an 11 assessment during the time that you were at 12 Highland as to whether or not a particular 13 transaction was or was not a fraudulent transfer 14 prior to it being executed? 15 A Then I misunderstood your question. I 16 thought you said did I ever consider if something 17 was a fraudulent transfer. Again, if I was to 18 make a determination, my determination is not 19 relevant. 20 Q Right. So let's -- let me -- let me 21 say my question. I'll say it more slowly. 22 A Okay. 23 Q And let's break it down in different 24 pieces. 25 First, I'm going to ask you if you made</p>	<p>220 1 not to respond to the extent it requires you to 2 disclose privileged information. 3 THE WITNESS: Thank you. 4 No, I did not, as it was a compliance 5 function in regards to this transaction with a 6 fulsome process that is run and overseen by 7 compliance. And ultimately the sole 8 decision-maker on that aspect and many others of 9 this transaction was Thomas Surgent, the chief 10 compliance officer. 11 BY MR. CLUBOK: 12 Q Okay. Did you specifically ask Mr. 13 Surgent to analyze whether the transaction that 14 resulted in the purchase of the ATE policy could 15 be considered a fraudulent transfer, given all the 16 facts and circumstances? 17 A I didn't feel the need to because Mr. 18 Surgent is more than capable of identifying that 19 issue and analyzing. 20 Q Did you specifically ask anyone at 21 Highland to analyze whether or not the transaction 22 that could -- strike that. 23 Did you ask anyone at Highland to 24 analyze whether the transaction that results in 25 the purchase of an ATE policy could be considered</p>

Conducted on July 29, 2021

<p>221</p> <p>1 a fraudulent transfer given the facts and 2 circumstances? 3 A No, because there is a process put in 4 place from SEC guidance and all codified in other 5 laws that it is a process that is run by 6 compliance. 7 Q Did you ask any outside counsel to make 8 any analysis as to whether the transaction that 9 results in the purchase of the ATE policy could be 10 considered a fraudulent transfer given the facts 11 and circumstances at the time? 12 MS. SMITH: I'm going to caution you 13 not to respond, to the extent it requires 14 disclosure of privileged information. 15 THE WITNESS: Thank you. No, because 16 that is, again, the process run by compliance who 17 chooses to go to outside counsel or not for that 18 analysis and other analyses. 19 BY MR. CLUBOK: 20 Q And I appreciate that answer. 21 MR. CLUBOK: By the way, I will say, 22 Ms. Smith, that the privilege that Highland had 23 for this which Mr. Ellington was -- may have had 24 while he was GC is now controlled by the current 25 board, represented by Mr. Feinstein is my -- my</p>	<p>223</p> <p>1 BY MR. CLUBOK: 2 Q You never asked -- when you were 3 general counsel for Highland, you never asked 4 anybody inside the organization or outside the 5 organization to conduct a analysis of whether or 6 not the ATE transaction could be considered a 7 fraudulent transfer on behalf of Highland Capital 8 Management; correct? 9 A That is correct. Due to the process 10 put in place, that was not my right or place to do 11 so. 12 Q So let's talk about the process that 13 was put in place, because earlier you said that it 14 was a very fulsome process. 15 A Yes. 16 Q And there was a very fulsome process 17 specifically with respect to the purchase of the 18 ATE mail? 19 A Yes, that's correct. 20 Q And you understood that that what you 21 call a fulsome process involved a compliance 22 review and a review of whether or not that 23 transaction could constitute a fraudulent 24 transfer? 25 A I'm not saying I knew that for a fact.</p>
<p>222</p> <p>1 understanding. And your cautioning Mr. Ellington 2 on privilege related to Highland Capital 3 Management's privilege I think is inappropriate. 4 Mr. Feinstein, if I'm wrong about that, 5 you can correct me. 6 MR. FEINSTEIN: Well, I was actually 7 going to jump in and say the same thing. 8 To the extent that the instruction is 9 don't reveal privileges of Sentinel's, that would 10 be one matter. But to the extent that it is a 11 privilege of Highland, that is another. And that 12 is our bailiwick and I have asserted privilege, so 13 maybe the question was just ambiguous. 14 MR. CLUBOK: Okay. 15 MS. SMITH: Well, I believe the 16 question, Mr. Clubok, referred to outside counsel 17 without specifying if it was Highland's outside 18 counsel or Sentinel's. 19 That was the purpose of my privilege 20 objection, if it was Sentinel's outside counsel. 21 MR. CLUBOK: I appreciate that. Well, 22 Mr. -- I believe Mr. Ellington answered no anyway. 23 But just to clear up the record, I'm going to just 24 ask it to be crystal clear. 25</p>	<p>224</p> <p>1 I'm saying I did not need to tell Mr. Surgent to 2 review that because he obviously, in my opinion, 3 would have spotted that issue and done a review as 4 part of his overall review of approving the 5 transaction. 6 Q Well, did you spot -- did you believe 7 that the transaction was a fraudulent transfer or 8 did you think about it? 9 A Yes, I thought about it. 10 I -- I didn't know. 11 Q Did you ask anybody for their advice? 12 A No, because again, I'm not supposed to 13 by design stick my nose into a compliance process. 14 Q And you are prohibited from asking the 15 chief of compliance to specifically look into 16 whether a proposed transaction could be considered 17 fraudulent transfer if you have questions about 18 that? 19 A Oh, I'm not prohibited from asking him. 20 It's just I'm not supposed to be involved in the 21 process and providing influence or input unless he 22 approaches me. 23 I could certainly go up and ask his 24 opinion. But there were numerous people involved 25 and it went through the full process, to my</p>

Conducted on July 29, 2021

<p>225</p> <p>1 understanding of how these things are analyzed by 2 compliance. 3 Q Yeah. But you had questions in your 4 mind at the time as to whether or not the ATE 5 transaction could be considered a fraudulent 6 transfer; correct? 7 A I considered it might be, yes. 8 Q And you never specifically asked Anyone 9 like Mr. Surgent to specifically look into that 10 issue; correct? 11 A No, Mr. Surgent had plenty of his plate 12 to handle running through this process. He didn't 13 need me. 14 Q Did you ever -- did you ever discuss 15 with Mr. Dondero, in any way, shape or form, your 16 concerns that perhaps this transaction could be 17 considered a fraudulent transfer? 18 A Not that I recall. Again, that's Mr. 19 Surgent's role in this set of circumstances. 20 Q So you never raised any kind of yellow 21 flag or red flag or, hey, just FYI we should 22 wonder whether this transaction could be 23 considered fraudulent transfer with Mr. Dondero? 24 A No. Again, that's Mr. Surgent's role 25 in this set of circumstances.</p>	<p>227</p> <p>1 is one guy in an organization, like an RAA, that 2 makes that determination, and his word is final. 3 If Mr. Surgent at any point says we are 4 not doing this, the idea is dead. 5 The machinations of that are a 6 compliance function. And I don't necessarily know 7 every little twist and turn, but to my 8 understanding, this is went on for weeks if not 9 months. 10 Q Okay. So let's talk very specifically 11 not what you understand is supposed to happen or 12 could happen with the transaction, but what you 13 know happened with this transaction. 14 First, you said there were numerous 15 meetings with a large group. And you said 16 something like as we've discussed before. But I 17 think the only -- I don't know if you've talked 18 about any meeting before other than the 19 five-minute discussion you had and maybe one other 20 meeting. 21 But when you say that you -- 22 A Let me -- let me stop there, Mr. 23 Clubok, because you asked me how many meetings 24 of -- with the whole large group did Isaac 25 Leventon attend, and I said after the first one or</p>
<p>226</p> <p>1 Q Describe -- you've testified there was 2 a fulsome process that Mr. Surgent specifically 3 went through with respect to the ATE policy. 4 A That's my understanding and my 5 recollection, yes. 6 Q And I'd like the basis for that 7 understanding or recollection by you describing in 8 as much detail as you can remember what you claim 9 was the, quote, Fulsome process with respect to 10 the ATE policy transaction. 11 A The -- there was numerous meetings, as 12 we've discussed before, with a large group 13 consisting of people from finance, tax, fund 14 accounting, compliance, legal, trading and 15 settlement. 16 There were concerns raised by different 17 factions within those various groups. 18 Then compliance, Mr. Surgent and his 19 staff go through a process that, as far as I 20 understand is reviewed by a conflicts committee; 21 is reviewed generally for the kind of issues 22 you've discussed, is this a fraudulent transfer, 23 is this in some way within violation of the 24 codified law, is this in some way provide a risk. 25 And when it comes down to the determination, there</p>	<p>228</p> <p>1 two, he never attended again and was not part of 2 the process, to my knowledge. So, you asked me 3 about meetings that either you knew existed or you 4 extrapolated from me, and that's what I thought. 5 Q So let's talk about what you say are 6 there were numerous meetings with a large group. 7 How many? 8 A I would say that I was personally 9 involved in? Six. And then I dropped out of the 10 process when it started going down the compliance 11 route, and the machinations of how this would take 12 place if it was approved by compliance. 13 Q So let's start with, first, there were 14 six large group meetings that you were involved in 15 about the purchase of the ATE policy, or roughly 16 six; correct? 17 A I'd say a minimum of four that I 18 personally attended at the genesis of the idea 19 until it started this compliance analysis. 20 Q There was a minimum of four large group 21 meetings that you were personally involved with 22 about the purchase of the ATE policy? 23 A Over a period of weeks, I would say 24 four is my recollection. It could have been as 25 many as six, but more like four.</p>

Conducted on July 29, 2021

<p>229</p> <p>1 Q And who specifically were in these four</p> <p>2 to six meetings?</p> <p>3 A I may not remember every --</p> <p>4 Q Excuse me. Name every human being that</p> <p>5 you can remember who were in these national</p> <p>6 compliance meetings.</p> <p>7 A I honestly cannot remember everyone</p> <p>8 because we're talking about five years ago and</p> <p>9 there were a lot of people on it, in my opinion.</p> <p>10 Mr. Waterhouse, Mr. Stoops, representatives from</p> <p>11 training -- I mean, from settlement, which would</p> <p>12 have been Carter Chism, potentially other people</p> <p>13 from his group. I remember Hunter cavities being</p> <p>14 in some, Mark Patrick, Mr. Surgent, Mr. Post,</p> <p>15 maybe --</p> <p>16 Q Wait, wait, wait. Hold on. Slow down.</p> <p>17 A Sorry.</p> <p>18 Q Mr. Patrick?</p> <p>19 A Mr. Patrick.</p> <p>20 Q Yep. Mr. Surgent?</p> <p>21 A Mr. Surgent. Mr. Post.</p> <p>22 Q Yep.</p> <p>23 A And I'm talking about the initial</p> <p>24 meetings I attended. After that, I don't know who</p> <p>25 attended.</p>	<p>231</p> <p>1 here -- at least a majority, if not all the ones</p> <p>2 that I attended.</p> <p>3 Q Was Carter Chism in one meeting or a</p> <p>4 majority of the meetings?</p> <p>5 A I don't recall. I just remember either</p> <p>6 him or other members of his team having a role</p> <p>7 because they were would be, you know, mechanically</p> <p>8 moving assets if they were inside of my compliance</p> <p>9 where they were (inaudible).</p> <p>10 Q And you remember him or his team being</p> <p>11 in four to six meetings?</p> <p>12 A I'm telling you I was in four to six.</p> <p>13 You are asking me that -- sorry,</p> <p>14 Mr. Clubok, I just can't recall all the members of</p> <p>15 the meetings five years ago.</p> <p>16 Q Well, that's why I don't want you to</p> <p>17 make up things. I asked you --</p> <p>18 A So you asked who attended any or all</p> <p>19 the meetings. And you said every human being that</p> <p>20 I could possibly recall which I tried to do that</p> <p>21 for you. I'm just telling you, I can't remember</p> <p>22 if we had a 15-minute meeting and an update if</p> <p>23 everyone showed up. I don't -- I just don't know.</p> <p>24 Q How many total of these four to six</p> <p>25 meetings -- you talked about Mr. Surgent being at</p>
<p>230</p> <p>1 Q I understand. You are talking about</p> <p>2 the --</p> <p>3 A Mr. Surgent, Mr. Post, potentially</p> <p>4 Ms. Thedford, Mr. Sevilla, myself. That's all I</p> <p>5 can recall with a decent degree of specificity.</p> <p>6 Q And Mr. Waterhouse was in all four or</p> <p>7 six of those meetings with you?</p> <p>8 A I don't know if he was at all of them.</p> <p>9 I remember him being in those initial meetings,</p> <p>10 but there were members of his team that were --</p> <p>11 that were there.</p> <p>12 Q Was Mr. Waterhouse in all those</p> <p>13 meetings?</p> <p>14 A I don't -- I can't tell you if he was</p> <p>15 in all of them.</p> <p>16 Q Was he in more than one?</p> <p>17 A Again, you are asking me to recall</p> <p>18 something from five years ago. I would assume he</p> <p>19 would have been in more than one.</p> <p>20 Q But you don't remember him being in --</p> <p>21 A I do not remember.</p> <p>22 Q Do you remember Mr. Stoops being in</p> <p>23 more than one such meeting?</p> <p>24 A I think I remember Mr. Stoops being</p> <p>25 in -- again, you are really testing my memory</p>	<p>232</p> <p>1 a five-minute meeting when you first came up with</p> <p>2 the idea and you threw the idea out there. After</p> <p>3 that, how many meetings was Mr. Surgent in out of</p> <p>4 these four to six that you -- that you</p> <p>5 participated in?</p> <p>6 A I don't remember Mr. Surgent being in</p> <p>7 any that I -- not being in every one that I -- in</p> <p>8 other words, if I was in there, he was in there,</p> <p>9 is my memory.</p> <p>10 Q So you remember Mr. Surgent also being</p> <p>11 in four to six large group meetings during the</p> <p>12 initial phases of this project after that</p> <p>13 five-minute initial discussion; right?</p> <p>14 A The five-minute initial discussion was</p> <p>15 an idea. It was literally throwing out an idea</p> <p>16 and there was very little banter about it at all.</p> <p>17 Q And then you remember Mr. Surgent being</p> <p>18 at four to six of the large group meetings that</p> <p>19 then discussed this idea?</p> <p>20 A If there was four to six, it included</p> <p>21 the entire group. There may have been meetings</p> <p>22 that were a subset. I was personally in my skill</p> <p>23 set.</p> <p>24 Q Right. But in the four to six that you</p> <p>25 were in, you remember Mr. Surgent being in every</p>

Conducted on July 29, 2021

<p>1 one?</p> <p>2 A That's to the best of my recollection.</p> <p>3 It could have been a subset meeting that I was in</p> <p>4 and he wasn't, but since it was a compliance</p> <p>5 issue, I would (inaudible) he was there.</p> <p>6 Q And then you said -- and then how many</p> <p>7 other additional meetings were there after that</p> <p>8 you know about? Not that you speculate or</p> <p>9 guessing, but that you know occurred after that?</p> <p>10 A I don't know. Unless I was there, I</p> <p>11 wouldn't know they occurred.</p> <p>12 Q So you don't know if there were any</p> <p>13 other large group meetings after the four to six</p> <p>14 that you attended; correct?</p> <p>15 A No, I don't, because I didn't attend</p> <p>16 them. Therefore I don't know for a fact that</p> <p>17 (inaudible).</p> <p>18 Q Okay, so then you said, the next step</p> <p>19 was concerns raised by -- and I'm having a hard</p> <p>20 time reading my handwriting, so maybe you can help</p> <p>21 me.</p> <p>22 Do you know what the next step was in</p> <p>23 these so-called fulsome project after these</p> <p>24 initial four to six meetings?</p> <p>25 A I believe the next step -- and I'm not</p>	<p>233</p> <p>1 When this transaction was being -- by</p> <p>2 the way, let me take a step back, at what point --</p> <p>3 was it -- at some point during these four to six</p> <p>4 meetings that it was decided that the seller of</p> <p>5 the policy would be Sentinel?</p> <p>6 A No, this was the -- the meetings I was</p> <p>7 involved in were based around could this be done,</p> <p>8 period, as an idea.</p> <p>9 Q Oh, okay, so during all the four to six</p> <p>10 meetings you were on, it was never mentioned that</p> <p>11 Sentinel would be the counter-party to sell the</p> <p>12 ATE policy; is that correct?</p> <p>13 A Oh, I don't know if it was never</p> <p>14 mentioned.</p> <p>15 MS. SMITH: Object.</p> <p>16 THE WITNESS: It's just that wasn't the</p> <p>17 crux of the meetings. The meetings were can this</p> <p>18 be done as a concept, and people airing their</p> <p>19 various concerns, issues, positives, negatives.</p> <p>20 It was general discussion of can this</p> <p>21 idea come to fruition, period.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q And in this time, in those big group</p> <p>24 meetings, was it -- was the concept being</p> <p>25 discussed that Sentinel would sell the policy or</p>
<p>234</p> <p>1 certain of this -- would have been running it</p> <p>2 through conflicts committee.</p> <p>3 Q And what is a conflict committee?</p> <p>4 A A committee of people that review</p> <p>5 potential conflicts and make a decision based on</p> <p>6 vote if they believe there's a conflict or not.</p> <p>7 Q And here, because you and Mr. Dondero</p> <p>8 owned Sentinel, and you were taking assets that</p> <p>9 were owned by other funds that Highland was</p> <p>10 responsible for, there is an obvious potential</p> <p>11 conflict; correct?</p> <p>12 A It's not my --</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: It's not my job to</p> <p>15 analyze the conflicts. That's compliance. I</p> <p>16 don't know what conflicts they saw and I don't</p> <p>17 know what the conflicts committee -- fell on the</p> <p>18 conflicts committee.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Well, as general counsel, did you</p> <p>21 believe that you -- people all the time make a</p> <p>22 decision where they recuse themselves from full</p> <p>23 conversations because they see there's a conflict.</p> <p>24 Lawyers make that determination all the time for</p> <p>25 themselves and for clients.</p>	<p>235</p> <p>1 were you still waiting to hear from Beecher</p> <p>2 Carlson as to whether or not they could get some</p> <p>3 other insurer?</p> <p>4 A At the time I was involved, I don't</p> <p>5 even think anyone had discussed anything with</p> <p>6 Beecher Carlson.</p> <p>7 Q So, if that's the case, because what I</p> <p>8 think you testified earlier that Beecher</p> <p>9 Carlson -- first Beecher Carlson tried to find a</p> <p>10 true independent third-party insurer. Only after</p> <p>11 they couldn't, that's when you moved on to</p> <p>12 Sentinel. Isn't that what your testimony was?</p> <p>13 A That's --</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 THE WITNESS: That's my recollection.</p> <p>16 But it doesn't mean that this process wasn't</p> <p>17 occurring before that.</p> <p>18 You were asking me more specifically,</p> <p>19 did somebody go out and try to get another</p> <p>20 reinsurer or insurer to (inaudible) policy.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q No. So during the --</p> <p>23 A You didn't ask me about this process</p> <p>24 at all.</p> <p>25 Q I understand. But you are saying</p>

Conducted on July 29, 2021

<p>237</p> <p>1 during these -- the four to six meetings that you</p> <p>2 were on, the big group meetings when this was</p> <p>3 first being discussed, at that point no one had</p> <p>4 even talked to Beecher Carlson about trying to</p> <p>5 identify a seller of the ATE policy; correct?</p> <p>6 A I don't know because I'm not everybody</p> <p>7 else. I never talked to Beecher Carlson about it.</p> <p>8 Q Right.</p> <p>9 A Do I know if every Highland employee</p> <p>10 asked Beecher Carlson a question at what point? I</p> <p>11 don't see how I could possibly opine on that.</p> <p>12 Q As far as you're aware -- so you never</p> <p>13 heard -- during the four to six meetings -- at</p> <p>14 some point you were told that Beecher Carlson</p> <p>15 was -- had tried but it failed to find a true</p> <p>16 independent third-party insurer to sell this ATE</p> <p>17 policy; correct?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: At some point, I was</p> <p>20 informed of that generally, yes.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q And were you informed of that before,</p> <p>23 during or after these four to six large group</p> <p>24 meetings that you've described?</p> <p>25 A I don't recall. But I would -- my</p>	<p>239</p> <p>1 Carlson, I don't know the answer to that.</p> <p>2 As far as I know -- from what --</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q No, no, no, that's not what I asked</p> <p>5 you. That's not what I asked you at all.</p> <p>6 MR. CLUBOK: I will move to strike.</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q That's definitely not what I asked you</p> <p>10 about everybody in the firm did. So listen to my</p> <p>11 question --</p> <p>12 A You said did anyone talk to Beecher</p> <p>13 Carlson.</p> <p>14 -- (overspeaking) --</p> <p>15 Q I didn't. I didn't. I did not. Okay.</p> <p>16 Just listen to my question. And I'm going to</p> <p>17 repeat it again. I -- specifically, I want a</p> <p>18 straight answer on this.</p> <p>19 During the four to six large group</p> <p>20 meetings that you claim Mr. Surgent was with you,</p> <p>21 in any of those meetings, was it discussed that</p> <p>22 Sentinel would be the one issuing the policy or</p> <p>23 did all of these meetings take place before you</p> <p>24 were informed that Beecher Carlson could not find</p> <p>25 an outside third party to sell the insurance?</p>
<p>238</p> <p>1 recollection is it was after this because I was</p> <p>2 already out of the process is my memory. But you</p> <p>3 are asking me to remember week by week, day by day</p> <p>4 five years ago.</p> <p>5 Q No, I'm asking very specifically</p> <p>6 because the real issue here is whether there was a</p> <p>7 problem with Sentinel selling its policy. And</p> <p>8 what I want a straight answer from you is there</p> <p>9 were these four to six large group meetings you</p> <p>10 say where you claim that Mr. Surgent was with you</p> <p>11 in all them. And my simple question is: During</p> <p>12 any of those meetings, was it discussed that</p> <p>13 Sentinel would be the one issuing the policy, or</p> <p>14 did these all take place before Beecher Carlson</p> <p>15 informed you in words or substance that you</p> <p>16 couldn't get an outside third-party insurance</p> <p>17 seller?</p> <p>18 A I don't know --</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: I don't know, because I</p> <p>21 can't remember if -- when raised, can Sentinel do</p> <p>22 this. But certainly, the meetings that I was</p> <p>23 involved with had concluded as far as I know, what</p> <p>24 you are asking me to now, you know, represent</p> <p>25 everyone in the firm could have talked to Beecher</p>	<p>240</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: Those are two questions.</p> <p>3 Do you want me to answer both of them</p> <p>4 or...?</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q You said -- okay. I'll break it into</p> <p>7 two questions.</p> <p>8 Number one: During the four to six</p> <p>9 large group meetings that you claim Mr. Surgent</p> <p>10 was with you, do you specifically remember it ever</p> <p>11 being discussed that Sentinel would be the one</p> <p>12 issuing the policy?</p> <p>13 A No, I do not recall anyone raising</p> <p>14 that.</p> <p>15 Q Okay. And is it the case that it was</p> <p>16 only after these four to six meetings that you</p> <p>17 learned that Beecher Carlson had been unable to</p> <p>18 identify a third-party insurer to sell the policy?</p> <p>19 A That is my recollection, yes.</p> <p>20 Q So, were you ever in any meeting with</p> <p>21 Thomas Surgent in which it was specifically asked</p> <p>22 whether there would be an issue if it was Sentinel</p> <p>23 issuing the policy as opposed to just any</p> <p>24 third-party insurer?</p> <p>25 A No, because I was not a part of those</p>

Conducted on July 29, 2021

<p style="text-align: right;">241</p> <p>1 meetings by design.</p> <p>2 Q And are you aware -- can you testify</p> <p>3 here under oath, that a meeting took place in</p> <p>4 which Mr. Sargent was specifically asked whether</p> <p>5 or not there was a problem with Sentinel being the</p> <p>6 one to issue the ATE policy?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 THE WITNESS: Whether a meeting took</p> <p>9 place -- whether a meeting took place or not, Mr.</p> <p>10 Sargent made the decision knowing that Sentinel</p> <p>11 was the -- was the issuer of the policy. So</p> <p>12 whether it was a meeting, that he decided by</p> <p>13 himself in the shower, he got a message from God,</p> <p>14 I don't know what, but he decided it.</p> <p>15 He's the only person that could decide.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Again, I'd like you to answer my</p> <p>18 questions and not statements that you want to</p> <p>19 make.</p> <p>20 I'm doing this in pieces, okay?</p> <p>21 A Okay.</p> <p>22 Q And you objected to compound questions</p> <p>23 and made me break it into pieces, so I'm going to</p> <p>24 ask you to answer my pieces going forward and not</p> <p>25 give me other answers to other things that I</p>	<p style="text-align: right;">243</p> <p>1 process.</p> <p>2 Q So you have no idea if Mr. Sargent even</p> <p>3 got one document related to this transaction;</p> <p>4 correct?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Me personally?</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q You personally.</p> <p>9 A Me personally, no.</p> <p>10 Q So just again, just as the double</p> <p>11 negative thing, so let's just be clear.</p> <p>12 As you sit here today, you have no</p> <p>13 personal knowledge of Mr. Sargent receiving even</p> <p>14 one document relating to the ATE transaction;</p> <p>15 correct?</p> <p>16 A No, I do not have any personal</p> <p>17 knowledge of what Mr. Sargent received, document</p> <p>18 or otherwise, in his analysis.</p> <p>19 Q And I appreciate it.</p> <p>20 The only problem is you started that</p> <p>21 with a "No". And I think the way I answered the</p> <p>22 question, I think you meant yes with that no.</p> <p>23 A I'll try my best.</p> <p>24 Q It's okay. If you mean no -- I'm not</p> <p>25 trying to get you to change my answer. I just</p>
<p style="text-align: right;">242</p> <p>1 haven't asked yet. I will either ask you compound</p> <p>2 questions and you can answer all at once or since</p> <p>3 you objected, I'll ask in pieces. I'm going to --</p> <p>4 A No, I have no objection to them. I</p> <p>5 just want to make sure I answer the question.</p> <p>6 Q Answer my piece, please.</p> <p>7 A Okay.</p> <p>8 Q Are you aware -- strike that.</p> <p>9 Can you testify here under oath that</p> <p>10 any meeting took place that you are aware of, even</p> <p>11 if you weren't there, in which Mr. Sargent was</p> <p>12 specifically asked whether or not there was any</p> <p>13 potential problems given that Sentinel was the one</p> <p>14 who was going to be issuing the ATE policy?</p> <p>15 A I don't know if any --</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: I don't know if any</p> <p>18 meeting like that took place.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Are you aware of any written</p> <p>21 documentation about the ATE policy transaction</p> <p>22 that was supplied to Mr. Sargent in connection</p> <p>23 with what you call the fulsome process?</p> <p>24 A I do not have an awareness of what was</p> <p>25 provided to Mr. Sargent as I am not part of the</p>	<p style="text-align: right;">244</p> <p>1 want to make sure that -- I think that was one of</p> <p>2 those where you --</p> <p>3 A I'll restate my answer. I'll restate</p> <p>4 my answer to make the record clean.</p> <p>5 Q Yeah, let me just ask that question --</p> <p>6 A I do not know of anything Mr. Sargent</p> <p>7 received, document or otherwise, to perform his</p> <p>8 analysis. I don't know.</p> <p>9 Q And the conflicts committee that you</p> <p>10 say that you assume weighed in, who was on the</p> <p>11 conflicts committee at the time or was it an ad</p> <p>12 hoc committee for each transaction?</p> <p>13 A No, it was the set group of people that</p> <p>14 served on it from time to time.</p> <p>15 I don't know who they were at that</p> <p>16 time.</p> <p>17 Q And so like at anyone time, there would</p> <p>18 be a conflicts committee, and so anything that</p> <p>19 came up that month, it would go to that group. Is</p> <p>20 that how it worked or do they just convene for</p> <p>21 every individual transaction, a different</p> <p>22 committee?</p> <p>23 A They convened on for -- as far as</p> <p>24 I know, on every individual transaction or if</p> <p>25 there was a set of things that weren't urgent,</p>

Conducted on July 29, 2021

<p>245</p> <p>1 they would convene and decide if there was a</p> <p>2 conflict and then compliance dealt with</p> <p>3 investigating those conflicts and ultimately the</p> <p>4 chief compliance officer made a determination.</p> <p>5 Q And who was on the conflicts committee</p> <p>6 at the time?</p> <p>7 A I don't know.</p> <p>8 Q How many members were there in the</p> <p>9 conflicts committee?</p> <p>10 A I don't know.</p> <p>11 Q All right. Can you identify a single</p> <p>12 member of the conflicts committee who was apprized</p> <p>13 of the transaction with Sentinel?</p> <p>14 A No. But it would be -- it would be in</p> <p>15 the debtor's records. I mean, it's a set</p> <p>16 committee that they set over a period of time.</p> <p>17 Q But you have no personal knowledge of</p> <p>18 the conflicts committee weighing in on the ATE</p> <p>19 transaction; correct?</p> <p>20 A No, I don't. But it's standard</p> <p>21 practice for them just to be involved.</p> <p>22 Q So it's correct, sir, that you have no</p> <p>23 personal knowledge of the conflict committee</p> <p>24 weighing in on the ATE transaction; right?</p> <p>25 A Correct.</p>	<p>247</p> <p>1 to me, I don't know.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q And when you say he approved the</p> <p>4 transaction, the -- you mean a written approval?</p> <p>5 A I don't know what approval process he</p> <p>6 has.</p> <p>7 I would assume it's a written approval.</p> <p>8 Maybe reflected in a compliance memo. I don't</p> <p>9 know what process he has. Again, because of the</p> <p>10 design, it got us to the SEC. I'm not involved in</p> <p>11 compliance.</p> <p>12 Q Well, wait a second. When you say you</p> <p>13 know that he approved the transaction, did he tell</p> <p>14 you personally he was approving the transaction?</p> <p>15 A Yes.</p> <p>16 Q And what were the -- was this a later</p> <p>17 meeting. Because you mentioned the four to six</p> <p>18 meetings. And I -- maybe I should have asked this</p> <p>19 question. After those initial four to six</p> <p>20 meetings, did you ever discuss the transaction</p> <p>21 with Mr. Surgent again?</p> <p>22 A Not that I recall until he said the ATE</p> <p>23 policy is going forward to me in passing in the</p> <p>24 hallway.</p> <p>25 And again, he's the only person that</p>
<p>246</p> <p>1 Q Is -- so, let me see if I have this</p> <p>2 right. What you have personal knowledge as you</p> <p>3 can testify to with respect to the ATE transaction</p> <p>4 and the process that was followed is you know that</p> <p>5 you were in four to six meetings with Mr. Surgent,</p> <p>6 but you don't recall the fact that Sentinel would</p> <p>7 be issuing the policy ever coming up; correct?</p> <p>8 A Correct.</p> <p>9 Q And you have no idea if Mr. Surgent</p> <p>10 ever received any documentation about the</p> <p>11 transaction; correct?</p> <p>12 A My personal knowledge, I have no idea</p> <p>13 of what he received.</p> <p>14 Q And you don't know if any member of the</p> <p>15 conflict committee was apprized of the Sentinel</p> <p>16 transaction; correct?</p> <p>17 A Me personally? No.</p> <p>18 Q And you don't know whether Mr. Surgent</p> <p>19 was ever specifically told that Sentinel would be</p> <p>20 the one issuing the policy prior to its issuance;</p> <p>21 correct?</p> <p>22 A I don't know that he --</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: I don't know he</p> <p>25 specifically told me he approved the transaction</p>	<p>248</p> <p>1 can approve that type of transaction.</p> <p>2 Q I'm sorry, he told you it -- so you had</p> <p>3 those initial four to six meetings.</p> <p>4 A Yeah.</p> <p>5 Q You never had another meeting with Mr.</p> <p>6 Surgent about the ATE policy. But he told you in</p> <p>7 passing in the hallway that the transaction was</p> <p>8 going forward?</p> <p>9 A Yes, that's my recollection.</p> <p>10 Q And did -- is that the only other</p> <p>11 communication you had with Mr. Surgent, other than</p> <p>12 what you've described thus far?</p> <p>13 A Yes, because by design compliance runs</p> <p>14 its own process.</p> <p>15 Q And when Mr. Surgent in passing told</p> <p>16 you it was going forward, did he say compliance</p> <p>17 approved the transaction?</p> <p>18 A Yeah, he approved it. Compliance</p> <p>19 doesn't approve it. The chief compliance officer</p> <p>20 approves it.</p> <p>21 Q And he specifically told you -- and how</p> <p>22 long was this conversation that you had in passing</p> <p>23 in the hallway?</p> <p>24 A Ten seconds.</p> <p>25 Q And what specific -- what were the</p>

Conducted on July 29, 2021

<p>249</p> <p>1 exact words that Mr. Surgent used, to the best of 2 your recollection? 3 A To the best of my recollection from 4 five years ago, he said the ATE thing is going 5 forward. 6 Q That's it? 7 A That's it. 8 Q And other than that, you have no 9 personal knowledge of how any approval that Mr. 10 Surgent may have given would have been 11 memorialized anywhere at Highland? 12 A No. But Mr. Surgent is a very careful, 13 diligent guy, performed his duties at the highest 14 level. I'm sure he did everything that was 15 required by law and by his approval. 16 Q And so it is true that you have no 17 personal knowledge of how any supposed approval 18 that Mr. Surgent may have given with respect to 19 the ATE transaction would have been memorialized 20 anywhere at Highland; correct? 21 MS. SMITH: Objection, asked and 22 answered multiple times. 23 THE WITNESS: You're correct. 24 BY MR. CLUBOK: 25 Q Did anybody else in the firm ever tell</p>	<p>251</p> <p>1 he took over the chief compliance role -- officer 2 role and had to declare over and over what was 3 affiliates and what wasn't, the ownership of 4 Sentinel when he declared it a non-affiliate. 5 So, he was infinitely aware for years 6 before this transaction, the ownership with 7 Sentinel. And I'm sure, again, because Mr. 8 Surgent did his job very well, I'm sure he 9 confirmed the ownership with Sentinel as part of 10 his process. 11 Q No, no, no, my question is slightly 12 different. 13 Do you have any specific personal 14 knowledge of information that was specifically 15 brought to Mr. Surgent's intent -- attention that 16 identified the ownership interest in Sentinel? 17 A Me personally, no, because I was by 18 design, not part of the process. 19 Q How did Mr. Surgent supposedly formally 20 declare Sentinel to be a non-affiliate? 21 MS. SMITH: Objection to form. 22 THE WITNESS: You'd have to ask Mr. 23 Surgent. 24 BY MR. CLUBOK: 25 Q When did he do this?</p>
<p>250</p> <p>1 you that Mr. Surgent had approved the transaction? 2 A Umm... I don't recall if anybody else 3 ever told me. But it took numerous people to 4 carry out the traction, to my understanding, so 5 obviously they wouldn't do it without the chief 6 compliance officer's approval, written or 7 otherwise. 8 Q Did the ATE transaction implicate the 9 Adviser's Act? 10 A I don't know. 11 Q Did you -- sorry. You don't know 12 whether or not -- I believe you said this, and I 13 apologize. I think this might be the last 14 question on this subject, but I just want to make 15 sure I ask it. 16 So I apologize if I asked it before, 17 but if you could just answer, bear with me, I 18 appreciate it. 19 You don't know whether anyone 20 specifically brought to Mr. Surgent's attention 21 the ownership interest in Sentinel prior to the 22 transaction going forward; correct? 23 A Untrue. 24 Q Ah, okay. So then please explain. 25 A Mr. Surgent knew from inception or when</p>	<p>252</p> <p>1 A Either at the -- I can't remember if he 2 was chief compliance officer in 2012 when it was 3 formed or not. But either he did so as taking 4 over from his predecessor or he did so when it was 5 formed. I just don't recall if he was the CCO or 6 not. 7 Q You talked -- you talked with 8 Mr. Leventon about whether or not Sentinel should 9 be considered a affiliate investor; correct? 10 A Mr. Leventon? 11 Q Yeah? 12 A Not that I recall having Mr. Leventon's 13 opinion about that. It's not really relevant. It 14 is solely compliance. 15 Q Did you ever talk to Mr. DiOrio about 16 whether Sentinel would be considered an affiliate 17 of any other entity? 18 A Not that I recall. Again, that 19 determination would only be me repeating what is 20 determined by compliance. 21 Q Did you ever have any conversation with 22 Mr. Sevilla about whether or not Sentinel should 23 be considered an affiliate of any other entity? 24 A I don't recall. 25 Q Did you ever consider whether Sentinel</p>

Conducted on July 29, 2021

<p>253</p> <p>1 was an affiliate of Multi Strat?</p> <p>2 A Did I? No.</p> <p>3 Q Did you ever discuss with anybody</p> <p>4 whether Sentinel should be considered an</p> <p>5 affiliated investor with respect to its Multi</p> <p>6 Strat ownership interest?</p> <p>7 A Not that I recall.</p> <p>8 MS. SMITH: Objection.</p> <p>9 THE WITNESS: But again, that analysis</p> <p>10 is done by compliance and determined by a chief</p> <p>11 compliance officer.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q If a question came up as to whether or</p> <p>14 not Sentinel should be treated as an affiliate for</p> <p>15 any other entity that Highland was involved with,</p> <p>16 would it have been the appropriate process to</p> <p>17 maybe turn that over to compliance?</p> <p>18 A Yes. They would inquire to compliance</p> <p>19 about their determination.</p> <p>20 Q And you would never have any role in</p> <p>21 that assessment?</p> <p>22 A No, other than repeating what</p> <p>23 compliance had decided, I had no role.</p> <p>24 Q Would you -- okay. Do you consider</p> <p>25 Sentinel to be an affiliate of yours?</p>	<p>255</p> <p>1 A Yes.</p> <p>2 MS. SMITH: Objection.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Would you say your management style was</p> <p>5 to frequently yell at people?</p> <p>6 A In the past, yes.</p> <p>7 Q How about in the 2017 timeframe?</p> <p>8 A I wouldn't say frequently. I would say</p> <p>9 more infrequently, but yes, I did it.</p> <p>10 Q Did you ever yell at Taylor Colbert</p> <p>11 about his use of the phrase "affiliated investor"</p> <p>12 with respect to Sentinel?</p> <p>13 A I don't recall who Taylor Colbert is.</p> <p>14 Q Did you ever yell at Trey Parker about</p> <p>15 that?</p> <p>16 A I don't ever remember yelling at Trey</p> <p>17 Parker.</p> <p>18 Q Did you ever yell at Carter Chisholm or</p> <p>19 Chris Dunn with respect to this subject?</p> <p>20 A I don't think I've ever yelled at</p> <p>21 Carter Chism, and I don't know who Chris Dunn is.</p> <p>22 Q Let's take a look at Exhibit 61.</p> <p>23 It is an email chain with an</p> <p>24 attachment. And I'm going to just focus you first</p> <p>25 on the email cover before we look at the</p>
<p>254</p> <p>1 A I don't --</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: I don't know what that</p> <p>4 analysis entails. I would say it's an affiliated</p> <p>5 entity -- to entities that I am involved with, I</p> <p>6 don't know enough about how to analyze something</p> <p>7 that's affiliated by law.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Did you ever ask anybody to talk to you</p> <p>10 specifically about whether or not Sentinel was an</p> <p>11 affiliated investor without going first to</p> <p>12 compliance?</p> <p>13 A Please repeat that. I want to make</p> <p>14 sure I understand what you're asking.</p> <p>15 Q Did you ever ask anybody at Highland to</p> <p>16 speak with you directly about whether or not</p> <p>17 Sentinel should be labeled an affiliated investor</p> <p>18 without first speaking to compliance?</p> <p>19 A Not to my knowledge. No, again,</p> <p>20 compliance is the ultimate arbiter.</p> <p>21 Q Did you ever yell at anybody for, in</p> <p>22 your view, improperly labelling Sentinel as an</p> <p>23 affiliated investor?</p> <p>24 A Yell at anyone? Not that I recall.</p> <p>25 Q Do you ever yell at work?</p>	<p>256</p> <p>1 attachment. And it's an email exchange that at</p> <p>2 the bottom starts with an email from Taylor</p> <p>3 Colbert to a number of folks and eventually works</p> <p>4 up to an email from you to Isaac Leventon and JP</p> <p>5 Sevilla.</p> <p>6 Do you see Exhibit 61?</p> <p>7 A I've got Exhibit 61.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And you can see here that -- if we go</p> <p>10 down to the -- you have to read backwards on the</p> <p>11 email.</p> <p>12 A Okay.</p> <p>13 MR. CLUBOK: And Nate, if you can give</p> <p>14 me that. Thank you.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q The email starts with Taylor Colbert</p> <p>17 saying, "Hi, Trey. Please see the attached for</p> <p>18 cash projection, distribution, allocation as</p> <p>19 requested. There are several estimates in the</p> <p>20 file that we will continue to sharpen over the</p> <p>21 next couple of days."</p> <p>22 And the subject is "Multi Strat Cash</p> <p>23 Projection."</p> <p>24 Do you see that?</p> <p>25 A I do.</p>

Conducted on July 29, 2021

<p>257</p> <p>1 Q And then if you work up the chain, you</p> <p>2 will see Taylor then sending another email to Trey</p> <p>3 and this time he copies some additional people,</p> <p>4 including Thomas Surgent. And Taylor says, "Trey,</p> <p>5 as discussed, please see the updated file with</p> <p>6 Sentinel being presented as an affiliated</p> <p>7 investor. Please let me know if you would like to</p> <p>8 see any changes made."</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q And then Mr. Surgent forwards to you</p> <p>12 and says "Let's discuss."</p> <p>13 A Yes.</p> <p>14 Q Did you discuss this with him ever?</p> <p>15 A I'm sure I did. If he asked me to</p> <p>16 discuss something, I almost always discussed it</p> <p>17 with him. I can't think of any instance where I</p> <p>18 didn't.</p> <p>19 Q And that same day, it looks like about</p> <p>20 50 minutes after Thomas Surgent sent you that</p> <p>21 email, you forward it to Isaac Leventon and JP</p> <p>22 Sevilla and said, "See below and attached and call</p> <p>23 me tomorrow on this."</p> <p>24 Do you see that?</p> <p>25 A I do.</p>	<p>259</p> <p>1 investor with respect to Multi Strat; isn't that</p> <p>2 true?</p> <p>3 A No, that's not true. I don't know what</p> <p>4 I'm -- I may have received instructions from</p> <p>5 Mr. Surgent. I don't recall anything about this.</p> <p>6 They were my two most senior guys.</p> <p>7 Very often I would have them handle things, so</p> <p>8 very easily Mr. Surgent could have given me</p> <p>9 instructions. But I said okay, I'll have JP and</p> <p>10 Isaac handle it. I just don't recall what</p> <p>11 happened here, but the characterizing is I drug</p> <p>12 them into the determination of what's an</p> <p>13 affiliated investor is, I'm sorry, that's silly</p> <p>14 because that determination is exclusively Mr.</p> <p>15 Surgent's.</p> <p>16 Q What was the discussion you had with</p> <p>17 Mr. Surgent when he forwarded this to you?</p> <p>18 A I have zero recollection of this.</p> <p>19 Q So, Mr. Surgent -- okay. You have zero</p> <p>20 recollection of what you guys discussed; is that</p> <p>21 correct?</p> <p>22 A You are asking me to remember a phone</p> <p>23 conversation from five years ago. No, I don't</p> <p>24 know. Or four years ago, sorry.</p> <p>25 Q If you look at the attachment and the</p>
<p>258</p> <p>1 Q Do you remember this exchange?</p> <p>2 A Not at all.</p> <p>3 Q You said before you don't know why</p> <p>4 Isaac Leventon would be involved at all in</p> <p>5 affiliate investor determination.</p> <p>6 Do you remember that?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: And I don't -- from this,</p> <p>9 I don't see that he is.</p> <p>10 Mr. Surgent involved me.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Right. But then you immediately sent</p> <p>13 an email to -- to Leventon and Sevilla and say,</p> <p>14 "Let's" -- you know, "call -- call tomorrow on</p> <p>15 this."</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q You brought Leventon and Sevilla into</p> <p>19 this exchange, didn't you?</p> <p>20 A I didn't bring them in into any</p> <p>21 exchange. I asked them to call to discuss -- to</p> <p>22 call me on this tomorrow.</p> <p>23 Q You brought Mr. Leventon and</p> <p>24 Mr. Sevilla into this subject of whether or not</p> <p>25 Sentinel should be presented as an affiliated</p>	<p>260</p> <p>1 first page, you can see that it identifies</p> <p>2 entities in shade if they are non-affiliated and</p> <p>3 not in shade if they are affiliated.</p> <p>4 Do you do see that?</p> <p>5 A I see shaded and non-shaded entities.</p> <p>6 Where do you get the key that the</p> <p>7 shaded are non-affiliates?</p> <p>8 Q Oh, I'm sorry. Well, you can see the</p> <p>9 percent of non-affiliate?</p> <p>10 A Okay.</p> <p>11 Q Right? And you can see where the</p> <p>12 percentage of non-affiliate, for example, Master</p> <p>13 Fund, Highland Credit Opportunities Fund adds up</p> <p>14 to 100 percent with three different entries.</p> <p>15 Do you see that?</p> <p>16 A Okay.</p> <p>17 Q And then for the Highland Credit</p> <p>18 Opportunities Fund, the same thing. You can see</p> <p>19 the one's that are shaded add up to 100 percent</p> <p>20 for -- sorry, add up to -- there's percentages</p> <p>21 associated with non-affiliated entities and there</p> <p>22 is no percentages associated with the others, for</p> <p>23 non-affiliate.</p> <p>24 Do you see that?</p> <p>25 A I do.</p>

Conducted on July 29, 2021

<p>261</p> <p>1 Q So with -- and this one -- and this is</p> <p>2 the attachment that was forwarded by Taylor when</p> <p>3 he says, "As discussed, please see the updated</p> <p>4 file with Sentinel being presented as an</p> <p>5 affiliated investor."</p> <p>6 Do you see that in the cover email?</p> <p>7 A I do.</p> <p>8 Q And so we look here and we see that</p> <p>9 fore -- and by the way, Highland credit</p> <p>10 Opportunities Fund, that's an entity that we now</p> <p>11 call Multi Strat; correct?</p> <p>12 A I don't recall that -- I mean, that</p> <p>13 could be, I just don't remember.</p> <p>14 Q Okay. But does it -- do you recall --</p> <p>15 there was -- because we were involved in New York</p> <p>16 litigation where we named an entity called Credit</p> <p>17 Opportunities.</p> <p>18 A Mm-hmm.</p> <p>19 Q At some point, it changed its name to</p> <p>20 Multi Strat.</p> <p>21 Do you -- does that ring a bell?</p> <p>22 A It does ring a bell. I just -- I just</p> <p>23 don't want to say 100 percent I remember that, but</p> <p>24 that sounds right to me.</p> <p>25 Q Okay. So with respect to Credit</p>	<p>263</p> <p>1 Q Sorry, you don't know why he would</p> <p>2 include you on what?</p> <p>3 A In other words, this table prepared by</p> <p>4 Mr. Colbert to -- I don't know what his goal</p> <p>5 was -- oh, a fund analyst. Sorry, I just saw his</p> <p>6 signature block. If it was correct, why would Mr.</p> <p>7 Surgent say "Let's discuss."</p> <p>8 It's Mr. Colbert's determination,</p> <p>9 again, who had zero relevance in determining what</p> <p>10 was an affiliated investor or not. If that was</p> <p>11 correct, why would Mr. Surgent need to discuss</p> <p>12 something with me.</p> <p>13 Q And you don't remember what you did</p> <p>14 discuss after this?</p> <p>15 A No, I don't. But I just find it</p> <p>16 interesting that, you know, at 6:00 o'clock at</p> <p>17 night, he needs to discuss with me on something</p> <p>18 that is correct. Usually people don't say, hey,</p> <p>19 use this table. It's correct.</p> <p>20 Q Do you remember after raising this</p> <p>21 issue with Mr. Surgent yelling at somebody about</p> <p>22 the fact that you believed they should not list</p> <p>23 Sentinel as an affiliated investor?</p> <p>24 A No, I don't.</p> <p>25 MS. SMITH: Objection to form.</p>
<p>262</p> <p>1 Opportunities, it shows Sentinel having a what's</p> <p>2 called a Highland Nav, and it's being, as</p> <p>3 Mr. Colbert mentioned, presented as an affiliated</p> <p>4 entity; do you see that?</p> <p>5 A He can be put on here anything. It is</p> <p>6 not his determination.</p> <p>7 Q This whole --</p> <p>8 A If Mr. Surgent said let's discuss and</p> <p>9 it was right, I have to doubt he would have needed</p> <p>10 to discuss anything with me.</p> <p>11 Q Do you recall -- do you recall --</p> <p>12 sorry. I'm sorry, Nate, can you pull this off the</p> <p>13 screen?</p> <p>14 There's got to be a way for me to do it</p> <p>15 easily, but-for some reason I can't figure it out.</p> <p>16 THE WITNESS: Another thing that is</p> <p>17 very interesting is Mark O'Connor and the Dugaboy</p> <p>18 Investment Trust in the same table, which as far</p> <p>19 as I know is a trust that somehow is related to</p> <p>20 Mr. Dondero, but it's Mark O'Connor as an</p> <p>21 individual is not considered as -- sorry, is</p> <p>22 considered an affiliated investor, yeah, but,</p> <p>23 again, I don't know why Mr. Surgent would even</p> <p>24 include me on something that was just simply</p> <p>25 correct.</p>	<p>264</p> <p>1 THE WITNESS: And I didn't raise the</p> <p>2 issue with Mr. Surgent. He contacted me to talk</p> <p>3 to him.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Sorry, after discussing this issue with</p> <p>6 Mr. Surgent, do you believe -- do you recall ever</p> <p>7 yelling at anyone on this --</p> <p>8 A No, no, unless Mr. Surgent told me to</p> <p>9 remind people that it -- they don't need to be</p> <p>10 making determinations for what affiliated</p> <p>11 investors are or not. I just don't remember the</p> <p>12 circumstances.</p> <p>13 Furthermore, if I yelled at somebody ad</p> <p>14 nauseam, it doesn't change Mr. Surgent's</p> <p>15 determination.</p> <p>16 Q At some point, Sentinel was referred to</p> <p>17 as an affiliate; correct?</p> <p>18 A Not to my knowledge.</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: Again, from inception to</p> <p>21 the end of my tenure, it had always been a</p> <p>22 compliance officer as a non-affiliate.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q It was brought to your attention that</p> <p>25 in emails various people had referred to Sentinel</p>

Conducted on July 29, 2021

<p>1 as an affiliate; correct?</p> <p>2 A Were any of those people Mr. Surgent?</p> <p>3 Q That's -- that's not my -- I'm the one</p> <p>4 who gets to ask the questions.</p> <p>5 So --</p> <p>6 A When you said people, I was just trying</p> <p>7 to understand...</p> <p>8 Q -- isn't it true that it was brought to</p> <p>9 your attention that in emails, various people had</p> <p>10 referred to Sentinel as an affiliate?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 THE WITNESS: I don't recall.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Well, that was specifically brought to</p> <p>15 your attention, wasn't it?</p> <p>16 A I don't recall.</p> <p>17 Q It was specifically brought to your</p> <p>18 attention by Isaac Leventon, wasn't it?</p> <p>19 A I don't recall.</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Let's draw your attention to tab 13,</p> <p>23 and I think we can mark it as Exhibit 87.</p> <p>24 (Deposition Exhibit 87 was marked for</p> <p>25 identification.)</p>	<p>265</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay. You can see this email --</p> <p>3 MR. CLUBOK: Nate, you will give me the</p> <p>4 controller? Yeah.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q There originally was an email from</p> <p>7 Isaac Leventon to Scott -- sorry, an email from</p> <p>8 Isaac Leventon to Scott Ellington on September 9,</p> <p>9 2019 re NREF.</p> <p>10 What's NREF?</p> <p>11 A I believe it is a fund managed by</p> <p>12 NexPoint Advisors.</p> <p>13 Q And what did -- what was Highland's</p> <p>14 connection to it?</p> <p>15 A Connection to it? Highland was a</p> <p>16 sub-adviser to NexPoint Advisors and provided</p> <p>17 shared services.</p> <p>18 Q Okay. And you see how they're talking</p> <p>19 about repurchases in 2019, and it identifies</p> <p>20 Sentinel Reinsurance Ltd.?</p> <p>21 A I do.</p> <p>22 Q And then Isaac -- do you remember Isaac</p> <p>23 sending you this information?</p> <p>24 A No, I don't.</p> <p>25 Q And why would Isaac Leventon have been</p>
<p>266</p> <p>1 THE WITNESS: I'm sorry, which -- which</p> <p>2 exhibit? I'm sorry --</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q We're going to put it up on the screen.</p> <p>5 Exhibit 87.</p> <p>6 MS. SMITH: We haven't seen that, so</p> <p>7 please put that in the chat. Thank you.</p> <p>8 MR. CLUBOK: Will do.</p> <p>9 REMOTE TECHNICIAN: Yes. And you said</p> <p>10 tab 13?</p> <p>11 MR. CLUBOK: Yep, tab 13 should be</p> <p>12 Exhibit 87. So there's an email and attachment.</p> <p>13 Let's just mark it collectively as Exhibit 87. We</p> <p>14 don't need the slip sheet. But let's mark that --</p> <p>15 Exhibit 87 is going to be a four-page document,</p> <p>16 which is a two-page email from Isaac Leventon to</p> <p>17 Scott Ellington, copying Matt DiOrio and JP</p> <p>18 Sevilla.</p> <p>19 And it attaches a two-page document</p> <p>20 that is a -- marked as a timeline and it</p> <p>21 identifies a number of emails, some of which</p> <p>22 mention Sentinel. Do we have Exhibit 87 up, Nate?</p> <p>23 REMOTE TECHNICIAN: Yes. One moment,</p> <p>24 please.</p> <p>25</p>	<p>267</p> <p>1 sending you this information and copying Matt</p> <p>2 DiOrio and JP Sevilla?</p> <p>3 A Well, I can't see the whole email chain</p> <p>4 so I don't even understand that -- if there is</p> <p>5 emails further down that I'm not being shown.</p> <p>6 Q Okay. So I'll go all the way down to</p> <p>7 the bottom. You can see the bottom is just Isaac</p> <p>8 sending you an email and it says subject NREF.</p> <p>9 But there is no content that we have.</p> <p>10 A Okay.</p> <p>11 Q I don't know if that was deleted or</p> <p>12 not. But the way it was produced to us, that is</p> <p>13 it?</p> <p>14 A It obviously -- that obviously has</p> <p>15 context?</p> <p>16 Q It may have been a premature sending,</p> <p>17 who knows?</p> <p>18 A Okay.</p> <p>19 Q A little bit later, he sends an email</p> <p>20 and he has content in it. And this time he says,</p> <p>21 "Repurchases from June of 2019. We cannot see</p> <p>22 behind the Schwab Omnibus account." And it</p> <p>23 identifies a number of entities, including</p> <p>24 Sentinel Reinsurance Limited 695,000.</p> <p>25 Do you see that?</p> <p>268</p>

Conducted on July 29, 2021

<p>269</p> <p>1 A Yes.</p> <p>2 Q And then if you go up, he sends the</p> <p>3 same group an email to you and DiOrio, Sevilla,</p> <p>4 slightly revised timeline with added 7/31 "Form 4"</p> <p>5 emails and with certain key emails highlighted,</p> <p>6 "as I discussed with Dio a few minutes ago."</p> <p>7 Do you see that?</p> <p>8 A I do.</p> <p>9 Q Who's Dio?</p> <p>10 A He is referring to Mr. DiOrio. That's</p> <p>11 his nickname.</p> <p>12 Q Okay. And if we go down and look at</p> <p>13 the timeline, the attachment --</p> <p>14 MR. CLUBOK: And Nate, did you make it</p> <p>15 the other page part of Exhibit 87?</p> <p>16 REMOTE TECHNICIAN: I'll merge the</p> <p>17 documents after the deposition.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q So again, 87 should be the cover email</p> <p>20 and the attachment. And Nate is going to put it</p> <p>21 back up here in a second.</p> <p>22 We are now on the attachment. And the</p> <p>23 attachment --</p> <p>24 MR. CLUBOK: You will give me control</p> <p>25 over here, Nate?</p>	<p>271</p> <p>1 Q And Isaac has highlighted that in the</p> <p>2 email he sent you.</p> <p>3 This is not highlighting we put on.</p> <p>4 This is something that Isaac put on to draw your</p> <p>5 attention to it pursuant to is email where he says</p> <p>6 said certain emails are highlighted as I discussed</p> <p>7 with Dio; do you see that?</p> <p>8 A I do.</p> <p>9 Q So, he highlights something where</p> <p>10 Fuentes says, "It's my understanding this is an</p> <p>11 affiliate Highland account." And he highlights</p> <p>12 another email that says, "Sentinel tried to get a</p> <p>13 little over 2 million out, and will get less than</p> <p>14 790,000 out," do you see that?</p> <p>15 A Yes.</p> <p>16 Q And does this ring a bell that Mr.</p> <p>17 Leventon specifically brought this issue to your</p> <p>18 attention?</p> <p>19 A Yes.</p> <p>20 Q And what happened?</p> <p>21 A What do you mean what happened?</p> <p>22 Q Okay. Do you remember anything else or</p> <p>23 just that he brought this issue to your attention?</p> <p>24 Was there any resolution?</p> <p>25 A Was there any resolution?</p>
<p>270</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q It is a two-page document that at the</p> <p>3 top starts; with -- it is a two-page Excel</p> <p>4 spreadsheet. It contains information. The top is</p> <p>5 an entry dated June 6, 2019, from DiOrio Fuentes.</p> <p>6 And then if you scroll down, it</p> <p>7 chronologically goes forward in time until</p> <p>8 ultimately December 6th, 2019, which is the last</p> <p>9 entry.</p> <p>10 Do you see that?</p> <p>11 A I do.</p> <p>12 Q So if you look here -- if we go back to</p> <p>13 the first page on June 25th, 2019 at 10:07 a.m.,</p> <p>14 there's an email that says, "Who at the Sentinel</p> <p>15 Reinsurance Limited is the Governance Re, 12</p> <p>16 percent of the fund is 2 million redemption that</p> <p>17 day." Do you see that?</p> <p>18 A I do.</p> <p>19 Q And at 6/25/2019 after another -- I'm</p> <p>20 skipping one email. But at 10:11, someone writes</p> <p>21 back -- it's from Fuentes to Norris, copying</p> <p>22 Hakemack, Thedford, Klos and it says, it's my</p> <p>23 understanding that this is an affiliate Highland</p> <p>24 account; do you see that?</p> <p>25 A I do.</p>	<p>272</p> <p>1 Q Yeah.</p> <p>2 A To what?</p> <p>3 Q What was the issue he was raising?</p> <p>4 What was he -- what did he bring here --</p> <p>5 He said, "Look at these emails."</p> <p>6 Presumably he had to have a discussion with him</p> <p>7 about it?</p> <p>8 A No, I instructed Mr. Leventon to</p> <p>9 construct this timeline.</p> <p>10 Q Oh. Why?</p> <p>11 A Because Mr. McGraner who is the</p> <p>12 portfolio manager for the funds managed by</p> <p>13 NexPoint Advisors, had asked me to understand why</p> <p>14 Sentinel had put in a redemption request. And I</p> <p>15 said I wasn't aware that they had.</p> <p>16 Q And the reason that that mattered was</p> <p>17 because Sentinel was not an independent investor,</p> <p>18 but was -- it could be considered an insider, and</p> <p>19 that might have consequences for them putting in a</p> <p>20 redemption; correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: Not at all.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Not at all?</p> <p>25 A No, not at all.</p>

Conducted on July 29, 2021

<p>273</p> <p>1 Q That was certainly a concern, wasn't</p> <p>2 it?</p> <p>3 A No, it was not.</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Let's look at the next page, July 24th,</p> <p>7 2019, an email from Hollister to Goetz, copying</p> <p>8 Norris, Noel. He says, "Investors are concerned</p> <p>9 about redemption capacity. 'Do we know how that</p> <p>10 big internal redemption is going to look to people</p> <p>11 who look at such reports'."?</p> <p>12 Do you see that?</p> <p>13 A Which one are you referring to?</p> <p>14 Q The one right above the yellow</p> <p>15 highlighting, where Hollister at NexPoint</p> <p>16 Securities says, "Investors are concerned about</p> <p>17 redemption capacity. 'Do we know how that big</p> <p>18 internal redemption is going to look to people who</p> <p>19 look at such reports'."?</p> <p>20 A Okay.</p> <p>21 Q And in response, McGraner writes, "Our</p> <p>22 reinsurer -- our reinsurer held the position and</p> <p>23 had to redeem to manage its own cash needs. Not</p> <p>24 sure if that helps but that's the reason."</p> <p>25 A Okay.</p>	<p>275</p> <p>1 redeemer;" it doesn't mean they are. Furthermore</p> <p>2 if you go down to Lauren Thedford, who is the</p> <p>3 compliance person "Is Sentinel a Form 4 filer for</p> <p>4 NXRT?" "Nope..." meaning they are not an affiliate</p> <p>5 and not an insider. So your assumptions are based</p> <p>6 upon what a bunch of real estate guys think.</p> <p>7 Q Right.</p> <p>8 A For the reason I had Mr. Leventon build</p> <p>9 this, is when it came to my attention from</p> <p>10 Mr. McGraner he said what's going on. CIMA is the</p> <p>11 one that told us to redeem out of this fund. Told</p> <p>12 Sentinel, when I refer to "us."</p> <p>13 Mr. McGraner didn't understand that and</p> <p>14 he goes, that's not what I understand, so I had</p> <p>15 Mr. Leventon build this timeline, so I could</p> <p>16 discuss it with Mr. McGraner. This is the</p> <p>17 resolution.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q CIMA told you --</p> <p>20 A -- (overspeaking) --</p> <p>21 Q I'm sorry, CIMA told you to redeem out</p> <p>22 of this fund on behalf of Sentinel?</p> <p>23 A Yes. In their annual portfolio review</p> <p>24 they instructed the independent directors to</p> <p>25 redeem out of this fund.</p>
<p>274</p> <p>1 Q And then Hollister says, "Reinsurer?</p> <p>2 Like our health insurance fund or just a</p> <p>3 well-known third party"?</p> <p>4 McGraner then writes back: "We have an</p> <p>5 offshore reinsurance company that has several</p> <p>6 investments in our funds. It writes D&O policies,</p> <p>7 property, etc."</p> <p>8 To which Hollister responds: "Just</p> <p>9 know that if a fund maxes out its redemptions,</p> <p>10 that's seen as a massive red flag unless there is</p> <p>11 a story to go along with it."</p> <p>12 Then asks if there is an explanation to</p> <p>13 give outside investors. Okay.</p> <p>14 A So, it was a concern that Sentinel's</p> <p>15 redemption could be considered as a problem for</p> <p>16 outside investors, given its status as an insider;</p> <p>17 correct?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: No. No, you're wrong.</p> <p>20 This is an email exchange with real estate</p> <p>21 analysts and a portfolio manager. Their knowledge</p> <p>22 of what's an affiliate or Form 4 filer, etcetera</p> <p>23 is utterly irrelevant because they have no</p> <p>24 training in this.</p> <p>25 They could have written, "UBS is our</p>	<p>276</p> <p>1 Q Yeah and -- (overspeaking) --</p> <p>2 A If you look at the 7/31/2019 email from</p> <p>3 Lorne Thedford. So, Mr. DiOrio, who's not a</p> <p>4 compliance professional says "Is Sentinel a Form 4</p> <p>5 filer for NXRT?" The compliance person says,</p> <p>6 "Nope, just under 1% and not included in JD's</p> <p>7 group, so Sentinel is good."</p> <p>8 The only email that matters on this</p> <p>9 whole thing is hers. She's the only person</p> <p>10 qualified to make that determination.</p> <p>11 Q Right. And so there was a</p> <p>12 determination that with respect to -- there was a</p> <p>13 determination that Sentinel would not be a Form 4</p> <p>14 Filer for NXRT, right?</p> <p>15 A Yes, and also she is the compliance</p> <p>16 person on any of these chains. I haven't looked</p> <p>17 them all because you guys were scrolling up and</p> <p>18 down. She says, "Nope, just under 1 percent."</p> <p>19 Now, what's really important, "and not included in</p> <p>20 JD's group," presumably referring in to Jim</p> <p>21 Dondero, meaning it's not a affiliate, so Sentinel</p> <p>22 was good.</p> <p>23 What these real estate guys think is</p> <p>24 about as important as is if we went and got a man</p> <p>25 off the street to make that determination.</p>

Conducted on July 29, 2021

<p>277</p> <p>1 Q And when you say Sentinel is good, does</p> <p>2 that mean you and Jim Dondero are free to make any</p> <p>3 transactions you want with Sentinel, without</p> <p>4 regard to whether or not you are -- they are</p> <p>5 related entities to you?</p> <p>6 A Absolutely not.</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: Absolutely not. It means</p> <p>9 compliance makes the decision, which on</p> <p>10 7/31/2019 at 12:14 p.m. Lorne Thedford, the</p> <p>11 compliance professional makes the determination.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q And is there a written determination</p> <p>14 with respect to the Sentinel transaction on the</p> <p>15 ATE policy in any writing anywhere that you are</p> <p>16 aware of?</p> <p>17 A My personal knowledge, I don't know but</p> <p>18 here is hers in writing. Sentinel is good, not</p> <p>19 part of JD's group. Not an affiliate.</p> <p>20 If you look up above, this actually got</p> <p>21 Mr. Surgent and Mr. Post on 6/26/2019. The</p> <p>22 "NexPoint Repurchase Event," along with</p> <p>23 Ms. Thedford and Mr. Surgent and Mr. Post, the</p> <p>24 three most senior people in compliance, including</p> <p>25 the chief compliance officer.</p>	<p>279</p> <p>1 followed for CDO Funds during this timeframe?</p> <p>2 A Yes, for anything that's --</p> <p>3 -- (overspeaking) --</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 THE WITNESS: -- Highland and because</p> <p>6 Highland, is my understanding, was the GP of that</p> <p>7 entity, it would have been, like all funds,</p> <p>8 governed by the same compliance process. But</p> <p>9 again, that's a question for Mr. Surgent and his</p> <p>10 staff.</p> <p>11 Q Okay, so it would be Mr. Surgent who</p> <p>12 would know whether or not the process for trades</p> <p>13 out of CDO Fund, SOHC and HFP at the time, would</p> <p>14 be subject to a compliance process that was</p> <p>15 established?</p> <p>16 A Yes, and again my experience with</p> <p>17 working with Mr. Surgent for 15 years, he was</p> <p>18 incredibly diligent, incredibly careful CCO.</p> <p>19 Q Is Mr. Surgent honest?</p> <p>20 A In my opinion, yes.</p> <p>21 Q Does Mr. Surgent -- have you ever --</p> <p>22 strike that.</p> <p>23 Have you ever heard of him being</p> <p>24 accused of being dishonest?</p> <p>25 MS. SMITH: Objection to form.</p>
<p>278</p> <p>1 Q Did Highland Capital Management have a</p> <p>2 protocol for non -- for trades -- strike that.</p> <p>3 Did Highland Capital Management have a</p> <p>4 compliance review protocol for trades that were</p> <p>5 not implicated by the Investment Advisors Act?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I don't understand the</p> <p>8 question.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q There is a compliance process to</p> <p>11 approve trades that you described, and I take it</p> <p>12 that applied to any transaction involving a fund</p> <p>13 that Highland was managing for outside investors?</p> <p>14 A Yes, and the 33 Act, 34 Act, 40 Act,</p> <p>15 the RAA, other codified laws, SEC letter rulings,</p> <p>16 etcetera.</p> <p>17 Q Okay, and do any of those rules or</p> <p>18 compliance reviews under those rules apply to a</p> <p>19 transaction between CDO Fund, SOHC, HFP on the one</p> <p>20 hand and Sentinel Insurance on the other hand or</p> <p>21 do you know?</p> <p>22 A I do not know. That's a question for</p> <p>23 Mr. Surgent and his staff.</p> <p>24 Q Was -- did -- was there a -- was there</p> <p>25 a compliance process that was required to be</p>	<p>280</p> <p>1 THE WITNESS: I'm sure somebody's</p> <p>2 accused him of being dishonest over the years.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Did he have a reputation for honesty</p> <p>5 around Highland Capital Management?</p> <p>6 A I don't know what his reputation was,</p> <p>7 but I would assume he did.</p> <p>8 Q Did you have a reputation for honesty</p> <p>9 around Highland Capital Management?</p> <p>10 A I believe so.</p> <p>11 Q Did Isaac Leventon have a reputation</p> <p>12 for honesty?</p> <p>13 A Yes.</p> <p>14 MS. SMITH: Now that we've established</p> <p>15 everyone's honest, is now a good time for a break?</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Almost. Did Jim Dondero have a</p> <p>18 reputation for honesty in the community, as far as</p> <p>19 you know.</p> <p>20 A What community?</p> <p>21 Q The business world that he dealt in.</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: I haven't run any polls;</p> <p>24 I don't really know.</p> <p>25 BY MR. CLUBOK:</p>

Conducted on July 29, 2021

<p>281</p> <p>1 Q I understand. We're talking about 2 reputation. You certainly know and have 3 acknowledged in the past that Mr. Dondero did not 4 have a reputation for honesty, correct?</p> <p>5 A I know that people --</p> <p>6 MS. SMITH: Objection to do form.</p> <p>7 THE WITNESS: I know there's certain 8 people that have that belief, yes.</p> <p>9 MR. CLUBOK: Okay, let's take a break.</p> <p>10 THE VIDEOGRAPHER: We're going off the 11 record at 5:09 p.m. 12 (Recess taken 5:09 p.m. to 5:33 p.m.)</p> <p>13 THE VIDEOGRAPHER: We are going back on 14 the record at 5:34 p.m.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q We've put up as an exhibit and it is a 17 cover letter from Leventon to Sevilla, dated 18 April 19th, 2017 with attachment "UBS settlement 19 structure, (9) and there's a PowerPoint. You're 20 not copied on that email, but I believe you've 21 seen whether this version or different versions of 22 this document, it was a settlement analysis 23 between UBS vs Highland and it talks about, in the 24 first substantive page: If Highland does not 25 settlement and UBS wins or Highland wins, bottom</p>	<p>283</p> <p>1 Sentinel. Potential to repair UBS 2 distribution/relationship, etcetera.</p> <p>3 Do you recall seeing this analysis, 4 even if it wasn't this exact version, something 5 like this?</p> <p>6 A No, I don't.</p> <p>7 Q It goes on and has a UBS settlement 8 structure. Where step 1 was HFP/CDO Fund buy 9 \$100 million ATE policy from Sentinel. And the 10 premium is all the assets in HFP/CDO Fund; do you 11 see that?</p> <p>12 A I do.</p> <p>13 Q And then step 2, was going to be 14 negotiate settlement with UBS; do you see that?</p> <p>15 A I do.</p> <p>16 Q Are you aware of this settlement 17 structure that was being considered prior to the 18 purchase of the ATE policy?</p> <p>19 A No.</p> <p>20 Q You had no idea about this?</p> <p>21 A I've never seen this. To my 22 recollection, I've never seen this.</p> <p>23 Q Did you know about the steps that are 24 outlined on the page -- it's slide 8.</p> <p>25 A Do I know about these steps? Obviously</p>
<p>282</p> <p>1 line there's no upside going to trial in either 2 matter.</p> <p>3 Do you recall this analysis that was done in 4 connection with the decision to purchase the ATE 5 policy?</p> <p>6 A No. I do not recall seeing this, 7 period, much less relative to the ATE policy.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Okay, I'm going to flip through it?</p> <p>10 A Okay.</p> <p>11 Q And whether or not you saw this 12 specific version or and there was like nine or ten 13 different ones, some with slightly different edits 14 but it talks about if Highland wins, it losses 15 because there's going to be a big tax liability.</p> <p>16 It says if Highland doesn't settle, UBS 17 could appeal.</p> <p>18 It says if Highland doesn't settle and 19 this was when CITI was still potentially in the 20 mix what would happen. It says: If Highland 21 Settles... Sentinel would control HFP/CDO Fund 22 assets currently \$94 million. See slide 10. 23 Sentinel and HCMLP can use HFP/CDO Fund assets to 24 generate cash to pay UBS settlement, \$50 million 25 tax liability avoided. Residual assets stay at</p>	<p>284</p> <p>1 I understand the steps, but I don't know who 2 drafted these or where they came up with these 3 steps.</p> <p>4 Q Well, on slide 8 of Exhibit 47, there 5 is a plan that's entitled "UBS settlement 6 Structure Summary."</p> <p>7 A Yep.</p> <p>8 Q And it goes through step 1, HFC/CDO 9 buying a \$100 million ATE policy from Sentinel.</p> <p>10 A Yeah.</p> <p>11 Q Then it continues to a conclusion where 12 "Sentinel keeps net assets (could be up to 13 \$50 million). Do you see that?</p> <p>14 A I'm sorry, you broke up. Are you 15 talking about the conclusion?</p> <p>16 Q Yep.</p> <p>17 A You already asked me that. Yes.</p> <p>18 Q There's step 1 through step 6 and then 19 the conclusion; do you see that?</p> <p>20 A I do.</p> <p>21 Q Did you know about this settlement 22 structure proposal in connection -- well, did you 23 know about this proposal?</p> <p>24 A I've never seen this. I didn't -- I 25 had no knowledge of this.</p>

Conducted on July 29, 2021

<p>285</p> <p>1 Q Even though you never saw this</p> <p>2 document, did you know there was at some time a</p> <p>3 plan that's consistent with what you see here on</p> <p>4 page 8 of Exhibit 47?</p> <p>5 A I certainly didn't know this was the</p> <p>6 plan because I never saw this. I was never told</p> <p>7 of this. I don't know who drafted it. I don't</p> <p>8 know who the audience was. No idea.</p> <p>9 Q Did you know that there was a plan to</p> <p>10 buy \$100 million ATE policy from Sentinel by HFP</p> <p>11 and CDO Fund?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I knew there was a plan</p> <p>14 at some point to buy a policy from Sentinel by the</p> <p>15 ultimate insureds. I didn't know what they were</p> <p>16 paying for that policy.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q And you know that it was ultimately a</p> <p>19 \$100 million policy that was purchased from</p> <p>20 Sentinel; correct?</p> <p>21 A I don't think I ever knew the policy</p> <p>22 amount. I don't even know that I've ever seen the</p> <p>23 policy.</p> <p>24 Q You are a 30 percent owner in Sentinel</p> <p>25 and you never knew what the policy amount was?</p>	<p>287</p> <p>1 true?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: No, I didn't discuss</p> <p>4 anything with CIMA because I don't think I spoke</p> <p>5 in the meeting.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q It was discussed in a meeting where you</p> <p>8 were present with CIMA -- strike that, the ATE</p> <p>9 policy was specifically discussed in a meeting</p> <p>10 that you were present with the CIMA</p> <p>11 representatives?</p> <p>12 A It was generally discussed when Jan was</p> <p>13 discussing the litigation.</p> <p>14 Q There was actually a PowerPoint</p> <p>15 presentation presented by your colleagues in that</p> <p>16 meeting; isn't that true?</p> <p>17 A I don't recall.</p> <p>18 Q In any event, did you know that there</p> <p>19 was a \$100 million --</p> <p>20 When is the first time that you learned</p> <p>21 that the ATE was a \$100 million face value?</p> <p>22 A I don't remember.</p> <p>23 Q How long ago?</p> <p>24 A I don't know. A couple of years ago,</p> <p>25 maybe longer.</p>
<p>286</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: I don't think I ever knew</p> <p>3 the final policy amount, no.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Did you ever hear it being discussed as</p> <p>6 being a roughly \$100 million ATE policy?</p> <p>7 A Best of my recollection it was a number</p> <p>8 lower than that, but no, I never knew the final</p> <p>9 amount.</p> <p>10 Q What was the number, best of your</p> <p>11 recollection, it was?</p> <p>12 A I thought was around 80 million, but</p> <p>13 obviously I was wrong.</p> <p>14 Q All right. After the policy was</p> <p>15 purchased -- well, strike that.</p> <p>16 You know the policy was purchased</p> <p>17 sometime in approximately August of 2017; correct?</p> <p>18 A I knew that that was roughly the</p> <p>19 timeframe, yes.</p> <p>20 Q And by the way, you had a meeting with</p> <p>21 CIMA about this policy two years later, right?</p> <p>22 A I had a meeting with CIMA about the</p> <p>23 litigation; not about this policy.</p> <p>24 Q Well, you specifically discussed the</p> <p>25 ATE policy during that 2019 meeting, isn't that</p>	<p>288</p> <p>1 Q Okay, so after the policy you found --</p> <p>2 after the purchase and --</p> <p>3 A I still don't recall it being</p> <p>4 100 million. I thought it was less, but obviously</p> <p>5 my memory is faulty with that.</p> <p>6 Q Sorry, did you ever know it was</p> <p>7 100 million?</p> <p>8 A I can't recall.</p> <p>9 Q All right. You knew that the premium</p> <p>10 was going to equal all the assets in the HFP and</p> <p>11 CDO Fund, correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: No, as I've testified</p> <p>14 numerous times today, I don't know what was</p> <p>15 finally transferred.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Well, you knew that the cash from all</p> <p>18 those entities were transferred; correct?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: I did not know what was</p> <p>21 transferred.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Okay, you knew that all of the cash</p> <p>24 from CDO Fund was transferred as part of the</p> <p>25 overall consideration for the ATE policy that was</p>

Conducted on July 29, 2021

<p>289</p> <p>1 purchase and sent to Sentinel; correct?</p> <p>2 A Not true. I don't know what was</p> <p>3 transferred.</p> <p>4 Q You certainly knew that all the cash</p> <p>5 from the HFP -- strike that.</p> <p>6 You knew that the all the cash in the</p> <p>7 accounts associated with HFP was transferred to</p> <p>8 Sentinel as part of a consideration for purchasing</p> <p>9 the ATE policy in August of 2017, correct?</p> <p>10 MS. SMITH: Objection, asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: You can ask it 100</p> <p>13 different ways. I don't know what was transferred</p> <p>14 from any entity to Sentinel as part of the premium</p> <p>15 or all the premium or a subset of the premium. I</p> <p>16 don't know.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q You were specifically told that all the</p> <p>19 cash from these funds, HFP and CDO Fund was being</p> <p>20 transferred to Sentinel as partial payment for the</p> <p>21 policy, weren't you?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 THE WITNESS: No, I don't recall that.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Did you ever in words or substance,</p>	<p>291</p> <p>1 know what was going on with the case, even though</p> <p>2 they had no involvement.</p> <p>3 Q You were -- there was a -- this</p> <p>4 settlement analysis PowerPoint that I'm showing</p> <p>5 you here, that's been marked -- this version of it</p> <p>6 that's been marked as 47, isn't it true that you</p> <p>7 tasked Isaac Leventon and Ms. Vitiello to prepare</p> <p>8 this?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 THE WITNESS: Not that I remember.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Isn't it true that you had discussions</p> <p>13 in April of 2017 and tasked them with preparing</p> <p>14 the UBS settlement structure PowerPoint?</p> <p>15 A Not that I recall and I don't recall</p> <p>16 ever seeing this, so if I tasked them with it,</p> <p>17 it's strange, they never sent it to me.</p> <p>18 Q Who, on behalf of CDO Fund, negotiated</p> <p>19 the terms of the ATE policy?</p> <p>20 A I don't know.</p> <p>21 Q Do you have any idea -- can you</p> <p>22 identify a single human being who was tasked with</p> <p>23 considering CDO Fund's interest in connection with</p> <p>24 the purchase of the ATE policy?</p> <p>25 A No idea.</p>
<p>290</p> <p>1 discuss the concept of substantially all of the</p> <p>2 assets in HFP and CDO Fund being transferred to</p> <p>3 satisfy the premium for the ATE policy?</p> <p>4 A I never had a discussion with anybody</p> <p>5 about what's being transferred because I wasn't</p> <p>6 involved with that process and had no knowledge of</p> <p>7 what was finally transferred.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Were you responsible for ever reviewing</p> <p>10 Sentinel's financial statements?</p> <p>11 A No.</p> <p>12 Q Did you ever look at any Sentinel</p> <p>13 financial statement ever?</p> <p>14 A Never.</p> <p>15 Q Were you ever asked to weigh in on the</p> <p>16 likelihood of UBS prevailing at trial, after the</p> <p>17 issuance of the ATE policy, but before the result?</p> <p>18 A By whom?</p> <p>19 Q By anyone?</p> <p>20 A I'm sure somebody asked me.</p> <p>21 Q Who?</p> <p>22 A I don't -- I don't recall who.</p> <p>23 Mr. Dondero, I know, asked me several times. I</p> <p>24 can't tell you when. I was asked one time by the</p> <p>25 retail fund board out of curiosity they wanted to</p>	<p>292</p> <p>1 Q Can you identify a single person who</p> <p>2 was tasked with considering SOHC's interest in</p> <p>3 connection with the purchase of the ATE policy?</p> <p>4 A No, I cannot.</p> <p>5 Q Can you identify a single person who</p> <p>6 was tasked with considering Highland Financial</p> <p>7 Partners or HFP's interest in connection with the</p> <p>8 purchase of the ATE policy?</p> <p>9 A No I cannot.</p> <p>10 Q Did Mr. Dondero sign off on the ATE</p> <p>11 policy purchase?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 -- (overspeaking) --</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Sorry, what's the form objection to</p> <p>16 that?</p> <p>17 MS. SMITH: He's testified multiple</p> <p>18 times that it's compliance that signed off on it.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Okay, Scott, did Mr. Dondero approve</p> <p>21 the purchase of the ATE policy?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if Mr. Dondero knew about</p> <p>24 the purchase of the ATE policy before it was</p> <p>25 consummated?</p>

Conducted on July 29, 2021

<p>293</p> <p>1 A Yes, I do.</p> <p>2 Q How do you know that?</p> <p>3 A I'm the one that told him. After</p> <p>4 Surgent told me it was going through, I was</p> <p>5 walking towards Mr. Dondero's office and said</p> <p>6 Surgent told me it's going through.</p> <p>7 Q And had you -- and was that the last</p> <p>8 time you had spoken to Mr. Dondero about the ATE</p> <p>9 policy?</p> <p>10 A No, I think I spoke to him about it</p> <p>11 infrequently after that, but it wasn't very often.</p> <p>12 Q What did he say since then about it?</p> <p>13 A Since when?</p> <p>14 Q Since that -- you just said that after</p> <p>15 you saw Mr. Surgent and he said it's going to</p> <p>16 through or whatever the words you used --</p> <p>17 A Yeah.</p> <p>18 Q I might have changed the words.</p> <p>19 A Yeah.</p> <p>20 Q And then you went to Mr. Dondero and</p> <p>21 what were the exact words you said to him about</p> <p>22 the ATE policy?</p> <p>23 A Surgent just told me that he greenlit</p> <p>24 or approved, I don't remember what I said,</p> <p>25 something to that effect, the ATE policy.</p>	<p>295</p> <p>1 that Mr. Surgent -- what Mr. Surgent said to you</p> <p>2 in the hallway?</p> <p>3 A I think I mentioned earlier today that</p> <p>4 I remembered Mr. Dondero oddly asking me if it was</p> <p>5 still in place a couple of years after it was put</p> <p>6 in place.</p> <p>7 Q And that's the only conversation you</p> <p>8 recall ever having with him?</p> <p>9 A That I remember with any kind of</p> <p>10 specificity. I remember talking to him countless</p> <p>11 times about trying to settle with you guys.</p> <p>12 Q How was it determined -- strike that.</p> <p>13 Who negotiated with Sentinel on the</p> <p>14 other side of Sentinel on behalf of any entity</p> <p>15 that purchased price of the ATE policy?</p> <p>16 A I don't know.</p> <p>17 Q Who negotiated on behalf of Sentinel</p> <p>18 the purchase for the ATE policy?</p> <p>19 A I don't know.</p> <p>20 Q Who negotiated on behalf of Sentinel,</p> <p>21 any term in the policy?</p> <p>22 A I don't know.</p> <p>23 Q Who negotiated on behalf of any party</p> <p>24 that had any connection to the ATE policy?</p> <p>25 A I had absolutely zero transparency to</p>
<p>294</p> <p>1 Q And what did Mr. Dondero say?</p> <p>2 A I don't remember. I don't remember</p> <p>3 exuberance or anything; it just seems like it was,</p> <p>4 you know, due course.</p> <p>5 Q And then at some point after that -- at</p> <p>6 various points after that you tried to talk</p> <p>7 Mr. Dondero into settling the UBS litigation;</p> <p>8 correct?</p> <p>9 A Many, many times.</p> <p>10 Q Did you ever remind him during those</p> <p>11 discussions about the existence of the ATE policy</p> <p>12 that could be used to help settle the case?</p> <p>13 A I don't remember specifically saying</p> <p>14 that, but I mean that was a known fact. I didn't</p> <p>15 know that I had to remind him.</p> <p>16 Q Well, did you ever generally raise or</p> <p>17 remind him or -- strike that.</p> <p>18 Did you ever generally bring up the</p> <p>19 existence of the ATE policy that could help</p> <p>20 facilitate a settlement you were trying to</p> <p>21 convince him to enter into with UBS?</p> <p>22 A I don't recall specifically or</p> <p>23 generally bringing it up after that time period.</p> <p>24 Q So, did you ever talk to Mr. Dondero</p> <p>25 again about the ATE policy after that passing on</p>	<p>296</p> <p>1 that process. I don't know.</p> <p>2 Q Do you know who would know?</p> <p>3 A Directors of Sentinel.</p> <p>4 Q The only people who would know who</p> <p>5 negotiated the terms of the ATE policy you can</p> <p>6 think of are the independent directors of Sentinel</p> <p>7 or all the directors of Sentinel?</p> <p>8 A Well, the independent directors, I</p> <p>9 believe, were the only people that were the</p> <p>10 directors at the time this was put in place and</p> <p>11 I -- you had asked me who may know. I would</p> <p>12 assume, being the directors, they would know, but</p> <p>13 you asked me to speculate.</p> <p>14 Q Who were the independent directors at</p> <p>15 the time that the policy was issued?</p> <p>16 A I don't recall.</p> <p>17 Q Does it ring a bell, Andrew Dean and</p> <p>18 Christopher Watler?</p> <p>19 A Doesn't ring a bell. I want to say it</p> <p>20 was people at Maples FS, but I could be wrong.</p> <p>21 Q Other than believing those two people</p> <p>22 would know who negotiated the terms, is there</p> <p>23 anybody else that you can think of in the world</p> <p>24 who would know how -- how the terms -- strike</p> <p>25 that. Would know anything about the negotiations</p>

Conducted on July 29, 2021

<p>297</p> <p>1 of the terms of the ATE policy other than --</p> <p>2 -- (overspeaking) --</p> <p>3 A Maybe Mr. Surgent. Since he was the</p> <p>4 final approver of the transaction, maybe he knows.</p> <p>5 Q All right. And you think Mr. Surgent</p> <p>6 might -- you think Mr. Surgent might know how the</p> <p>7 price and other terms of the ATE policy were set?</p> <p>8 A Potentially. You know, again, you are</p> <p>9 asking me to speculate. I just I learned it</p> <p>10 was -- (inaudible).</p> <p>11 -- (overspeaking) --</p> <p>12 Q Is there anybody that you would expect</p> <p>13 in the legal department to know?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 THE WITNESS: I don't know. I don't</p> <p>16 know if it was done through counsel. I don't know</p> <p>17 if the firm retained counsel. I just don't know</p> <p>18 how it was done. I literally have no idea.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q So Mr. Leventon sent this email to JP</p> <p>21 Sevilla in -- (overspeaking) -- of 2019 --</p> <p>22 -- (overspeaking) --</p> <p>23 A Yes.</p> <p>24 Q -- 2017 This is several months before</p> <p>25 the policy is purchased, right?</p>	<p>299</p> <p>1 -- (overspeaking) --</p> <p>2 THE WITNESS: -- sorry, in the</p> <p>3 structure summary, yes.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q And, in fact, the premium did turn out</p> <p>6 to be all or virtually all of the assets in HFP</p> <p>7 and CDO Fund, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I just don't know.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Did you ever make any effort to</p> <p>12 consider whether or not HFP and CDO Fund would</p> <p>13 retain the sufficient ability to satisfy a future</p> <p>14 judgment that might be awarded against them by --</p> <p>15 in favor of UBS?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: No, that was a process</p> <p>18 that compliance ran. I was not part of that</p> <p>19 process.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Compliance ran a process specifically</p> <p>22 to consider what ability HFP would have to satisfy</p> <p>23 a potential future judgment in UBS's favor?</p> <p>24 A Compliance ran the process of approving</p> <p>25 this transaction, which I'm assuming would be the</p>
<p>298</p> <p>1 A Yes.</p> <p>2 Q And in it he says that that the plan is</p> <p>3 to buy a \$100 million ATE policy.</p> <p>4 A Correct.</p> <p>5 Q And he said --</p> <p>6 A And you said that "he said." I don't</p> <p>7 know that Mr. Leventon drafted this document.</p> <p>8 Q Okay. In the presentation that Mr.</p> <p>9 Leventon forwards to JP Sevilla it states that</p> <p>10 step one was for HFP and CDO Fund to buy</p> <p>11 \$100 million ATE policy from Sentinel, right?</p> <p>12 A Correct.</p> <p>13 Q And in fact \$100 million ATE policy was</p> <p>14 purchased from Sentinel; correct?</p> <p>15 A I'll take your word for it. I'd have</p> <p>16 to look at the policy to tell you the amount, but</p> <p>17 if that's what you say it is, okay.</p> <p>18 Q And Mr. Leventon, in this email -- in</p> <p>19 the document that he sends to Mr. Sevilla, also --</p> <p>20 strike that.</p> <p>21 In the document that Mr. Leventon sends</p> <p>22 to Sevilla, it also anticipates that the premium</p> <p>23 for the ATE policy will be all the assets in HFP</p> <p>24 and CDO Fund, right?</p> <p>25 MS. SMITH: Objection to form.</p>	<p>300</p> <p>1 analysis of that.</p> <p>2 I certainly didn't do that analysis nor</p> <p>3 would I have the skills to analyze what these</p> <p>4 securities would be worth at some point in the</p> <p>5 future.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Did you ever test -- do you have any</p> <p>8 idea what the total assets in HFP and CDO Funds</p> <p>9 were worth at the time of the ATE transaction?</p> <p>10 A No idea.</p> <p>11 Q Do you have any idea if there was a --</p> <p>12 strike that.</p> <p>13 Do you know what the premium was for</p> <p>14 the policy?</p> <p>15 A No, I don't. I'd have to look at the</p> <p>16 policy.</p> <p>17 Q Do you have any idea if the assets that</p> <p>18 were used to purchase the policy were a fair</p> <p>19 equivalent value for the amount of premium that</p> <p>20 was due to pay for the policy?</p> <p>21 MS. SMITH: Objection, calls for a</p> <p>22 legal conclusion.</p> <p>23 THE WITNESS: No, I didn't have the</p> <p>24 skills to analyze that.</p> <p>25 BY MR. CLUBOK:</p>

Conducted on July 29, 2021

<p>301</p> <p>1 Q Did you ask anyone to specifically look 2 into the question of whether or not the assets 3 that were being used to purchase the ATE policy 4 represented fair value for the purchase of the 5 policy? 6 A No, again, that would be part of, I 7 would assume, compliance's process and not my job. 8 Q And do you know -- you say you would 9 assume, but did you do anything to determine 10 whether or not a analysis had been run to see if 11 the assets being transferred to Sentinel were fair 12 value in light of the policy that was obtained in 13 exchange? 14 A No and, again, because of SEC guidance 15 that's not my position or right or obligation or, 16 by design, I'm not supposed to be there asking 17 those questions. 18 Q SEC -- what SEC guidance prohibits you 19 from engaging in an analysis as to whether or not 20 that transaction constituted a fraudulent 21 transfer? 22 A It's supposed to be the sole 23 responsibility of compliance and not due to 24 outside influence. 25 Q What SEC guidance says that?</p>	<p>303</p> <p>1 specifically prohibited you from engaging in a 2 fraudulent transfer analysis with respect to the 3 ATE policy? 4 A No, from me interfering in the process 5 he runs as the Chief Compliance Officer, so if I 6 was going to get my own analysis that, by 7 definition, is interfering. 8 Q Okay, I want to be very specific in the 9 question that you are answering, okay. 10 I asked -- you said -- I specifically 11 want to ask you about an analysis of a transaction 12 like the one that was done to purchase the ATE 13 policy with respect to whether or not it 14 constitutes a fraudulent transfer. 15 And my question is whether you were 16 ever told, in words or substance, that SEC 17 guidance prohibited you as the general counsel 18 from considering that question? 19 A Yes, solely compliance. You can ask it 20 a thousand times. Solely compliance. 21 Q Okay, and Mr. Surgent told you that 22 there was such SEC guidance. 23 A Mr. Surgent told everyone compliance 24 runs their own process. If they want knowledge 25 from you or analysis from you, they'll come and</p>
<p>302</p> <p>1 A You'd have to ask Mr. Surgent. I've 2 been told that 20 times. Compliance deals with an 3 arbiter. Then they do their analysis, their own 4 due diligence and they come to a determination. 5 If they want information from me, they come and 6 ask me for it. 7 Q You were told 20 times by Mr. Surgent 8 that SEC guidance prohibited you from considering 9 whether or not the ATE transaction constituted a 10 fraudulent transfer? 11 A No, Andy, you asked me if I went and 12 asked anybody to perform that analysis. 13 SEC guidance, to my understanding, that 14 that is solely the responsibility of compliance 15 and others don't go and do their own analysis. 16 Q No, my specific question was: You said 17 that there was SEC guidance that you were told 20 18 times, that supposedly prohibited you from 19 engaging in an analysis of whether or not a 20 transaction like the one involving the ATE policy 21 constituted a fraudulent transfer? 22 A Solely responsibility of compliance, it 23 is not me to generate that analysis. 24 Q And you are saying that you were told 25 by Mr. Surgent that there is SEC guidance that</p>	<p>304</p> <p>1 ask you. 2 Q Do you know anything more specific 3 about what Surgent supposedly told you about this 4 supposed SEC guidance? 5 MS. SMITH: Objection to form. 6 THE WITNESS: You need to ask Mr. 7 Surgent. 8 BY MR. CLUBOK: 9 Q No, I'm asking if you know anything 10 more -- if you can say anything more specific 11 about what Mr. Surgent supposedly told you, other 12 than what you've just said? 13 A When Mr. Surgent -- 14 MS. SMITH: Objection to form. 15 THE WITNESS: When Mr. Surgent defined 16 a process that had to do with compliance, I 17 adhered to what he said. 18 BY MR. CLUBOK: 19 Q Move to strike as nonresponsive. 20 I am just asking: Did he tell you 21 anything more specific about the supposed SEC 22 guidance that you've described, other than what 23 you've -- 24 A No. 25 Q -- testified here?</p>

Conducted on July 29, 2021

<p>305</p> <p>1 A No. He didn't given training seminars 2 on SEC guidance. 3 Q Did you have any idea of the rough 4 value of the assets in CDO Fund and SOHC, and HFP 5 at that time frame? 6 MS. SMITH: Objection to form. 7 THE WITNESS: No. 8 BY MR. CLUBOK: 9 Q Have you ever known about the value of 10 the assets in HFP since -- strike that. 11 At some point HFP was declared 12 insolvent; right? 13 A I don't know. 14 Q You'd know that there was an insolvency 15 letter sent with respect to HFP, right? 16 MS. SMITH: Objection to form. 17 THE WITNESS: I don't know what letters 18 were sent to the investors of HFP. 19 BY MR. CLUBOK: 20 Q You knew that HFP had been -- had told 21 its investors that was insolvent, correct? 22 A No, I don't know what it told its 23 investors. I'm not an HFP investor. 24 Q You knew that there would be tax 25 consequences if it turned out that HFP were</p>	<p>307</p> <p>1 myself and I was never an investor in HFP and 2 never took the deduction with them. 3 BY MR. CLUBOK: 4 Q No, you specifically in settlement 5 discussions mentioned that you knew that HFP had 6 been declared insolvent and that they would have 7 tax liability if there were assets left after the 8 UBS litigation; isn't that true? 9 A Oh, absolutely. I informed you that I 10 had been told, that there were people that took 11 tax deductions, and if HFP had value past some 12 date certain it would unwind those tax deductions. 13 What you asked me if I knew -- if I 14 knew a letter was sent to those investors, of what 15 deductions they took, I have no knowledge of any 16 of that. 17 Q Did you ever tell Mr. Seery or the 18 Pachulski firm anything about the likelihood that 19 SOHC would be proven to have been insolvent? 20 A No, I don't remember having that 21 discussion with Mr. Seery or Pachulski, no. 22 Q Did you know that a position was taken 23 by the debtor in the bankruptcy court, that 24 suggested that there was uncertainty as to whether 25 or not insolvency could be proven with respect to</p>
<p>306</p> <p>1 solvent because it were to -- strike that. 2 You specifically knew that if HFP were 3 to prevail against UBS and retain assets after 4 2016 that it would create a tax liability for 5 Mr. Dondero and others, correct? 6 MS. SMITH: Objection to form. 7 THE WITNESS: I knew that generally, 8 yes. 9 BY MR. CLUBOK: 10 Q And you knew that because you 11 understood in HFP that all those investors, 12 including Mr. Dondero had taken what was called a 13 worthless stock deduction with respect to their 14 interest in HFP; correct? 15 MS. SMITH: Objection to form. 16 THE WITNESS: I don't know what 17 deductions they took. 18 BY MR. CLUBOK: 19 Q Okay, you knew that there had been 20 deductions taken by Mr. Dondero and others 21 including yourself, I believe, with respect to the 22 supposed worthlessness of their investment 23 interest in HFP; right? 24 MS. SMITH: Objection to form. 25 THE WITNESS: I would only know about</p>	<p>308</p> <p>1 HFP, SOHC and CDO Fund? 2 A I don't know what the debtor decided to 3 make a determination of those entities. I know 4 they did their own analysis. 5 Q Did you ever provide any information to 6 assist debtor's counsel to determine whether or 7 not UBS would be likely able to show insolvency 8 with respect to HFP, CDO Fund and SOHC? 9 A Me personally, no. I believe they did 10 an evidence and document-based search and did 11 their own analysis is my understanding. 12 Q Did you ever explain to anyone your 13 knowledge with respect to the worth -- did you 14 ever explain to anyone your knowledge about the 15 tax deductions that had been taken with respect to 16 SOHC and HFP and CDO? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I remember telling Mr. 19 Seery what I discussed with you in settlement 20 discussions prior to Mr. Seery's involvement, that 21 various individuals, including Mr. Dondero had 22 taken these tax deductions, and that I understood 23 that -- and again this was just told to me, that 24 if there was value after a date certain, that it 25 could jeopardize those tax deductions.</p>

Conducted on July 29, 2021

<p>309</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever tell Mr. Seery that HFP,</p> <p>3 CDO Fund and SOHC were ghost funds?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 THE WITNESS: Well, that's namesake</p> <p>6 that the offshore community uses with funds with</p> <p>7 no directors so, yes, I told him that.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q You told him that because they had no</p> <p>10 directors. Did you ever tell them -- strike that.</p> <p>11 Do you know whether or not the ATE</p> <p>12 policy would be considered an asset of the</p> <p>13 insureds?</p> <p>14 A I have no idea. I don't know -- I</p> <p>15 don't have any training in how to assess that.</p> <p>16 Q Did you make any effort to get an</p> <p>17 answer to whether or not the ATE policy could be</p> <p>18 considered an asset of the insureds?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Let's look at Exhibit 2. It is a</p> <p>23 seven-page document entitled "Purchase Agreement</p> <p>24 dated August 7th, 2017."</p> <p>25 Have you ever seen this document</p>	<p>311</p> <p>1 of any of the entities for which Mr. Dondero</p> <p>2 signed his name to this agreement?</p> <p>3 MS. SMITH: I'm sorry, Andy, can you</p> <p>4 repeat the question? You kind of went out on me.</p> <p>5 I'm sorry.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q No problem. Mr. Ellington, can you</p> <p>8 identify a single human being from anywhere in the</p> <p>9 Highland organization, who acted on behalf of any</p> <p>10 of the entities for which Mr. Dondero signed his</p> <p>11 name to this agreement?</p> <p>12 A I was not involved in this process.</p> <p>13 I had no transparency in the process and the</p> <p>14 answer is no.</p> <p>15 Q And sorry, you said you'd never seen</p> <p>16 this before today?</p> <p>17 A I said I don't recall seeing it. I</p> <p>18 don't believe I ever have.</p> <p>19 Q If you take a look at Schedule A, you</p> <p>20 see all the assets listed.</p> <p>21 A I'm sorry, take a look at what?</p> <p>22 Q Schedule A.</p> <p>23 A Yes, Schedule A, sorry.</p> <p>24 Q You see where it lists assets of the</p> <p>25 various entities.</p>
<p>310</p> <p>1 before?</p> <p>2 MS. SMITH: Objection, asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I don't believe I have.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q You see on the third page where</p> <p>7 Mr. Dondero signs on behalf of CDO Fund, CDO</p> <p>8 HoldCo, SOHC and CDO Opportunity Master Fund?</p> <p>9 A CDO master, opportunity -- yes I do.</p> <p>10 Q And do you see where he also signed on</p> <p>11 behalf of the next page, HFC and HFP?</p> <p>12 A Yes.</p> <p>13 Q And did Mr. Dondero negotiate the terms</p> <p>14 of all of these entities?</p> <p>15 A I don't know.</p> <p>16 Q Did you advise Mr. Dondero on behalf of</p> <p>17 any of these entities that he signed on behalf of?</p> <p>18 A No.</p> <p>19 Q Did you act in any way on behalf of any</p> <p>20 of these entities that Mr. Dondero signed his name</p> <p>21 on behalf of?</p> <p>22 A No, I was not involved in this process</p> <p>23 at all.</p> <p>24 Q Can you identify a single human being</p> <p>25 from the Highland organization who acted on behalf</p>	<p>312</p> <p>1 A I do.</p> <p>2 Q Including cash in some cases.</p> <p>3 A Yes.</p> <p>4 Q Did you know that all these assets were</p> <p>5 consideration for the purchase agreement?</p> <p>6 A I see that now.</p> <p>7 MS. SMITH: Objection, calls for legal</p> <p>8 conclusion.</p> <p>9 THE WITNESS: I mean, I see it in the</p> <p>10 document. Obviously, I knew there was some assets</p> <p>11 as part of a premium, but these specific assets,</p> <p>12 I had zero knowledge of these specific assets.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Remember the settlement document that I</p> <p>15 showed you earlier?</p> <p>16 A The what document?</p> <p>17 Q The settlement structure document that</p> <p>18 I showed you earlier.</p> <p>19 A Oh, the PowerPoint presentation?</p> <p>20 Q Yeah.</p> <p>21 A Yes.</p> <p>22 Q Was there any version of that that you</p> <p>23 ever told -- strike that.</p> <p>24 Did you ever have a discussion with</p> <p>25 Stephanie Vitiello about any UBS settlement</p>

Conducted on July 29, 2021

<p>1 structure in April of 2017, around the time of 2 that document? 3 A Not that I recall, no. 4 Q Let's show you what's behind tab 24. I 5 don't think you have this and we'll call it 6 whatever the next exhibit is. Could you put that 7 up. 8 What's the number, Shannon? 9 (Deposition Exhibit 88 was marked for 10 identification.) 11 BY MR. CLUBOK: 12 Q So Exhibit 88 is an email from 13 Stephanie Vitiello to Isaac Leventon. Previously 14 we showed you a document that had been marked 15 as -- that had a UBS settlement structure. 16 I think it was like version 9 at that 17 point. 18 This one which is a few days earlier, 19 it says, "UBS settlement structure (SV) maybe that 20 stands for Stephanie Vitiello. 21 And it says: "Thanks for sending. 22 Based on our discussion with Scott, I started 23 updating the first few slides. I will be in by 8 24 tomorrow so we can edit before we meet with Scott 25 if you would like."</p>	<p>313 315 1 and how long ago, but I have a pretty good memory. 2 Q Do you remember less than an hour ago 3 when I asked you if you were ever told that cash 4 was transferred from HFP funds and CDO Funds to 5 Sentinel with respect to the ATE policy? 6 A I do. 7 Q Do you remember saying that you're 8 certain you never knew that? 9 A That's not what I said. I said I don't 10 recall. 11 Q Okay, I'm going to -- I'm going to show 12 you what's been marked as Exhibit 89, which is 13 behind tab 30. 14 (Deposition Exhibit 89 was marked for 15 identification.) 16 BY MR. CLUBOK: 17 Q This is a one-page document that starts 18 with Katie Irving sending an email to Carter Chism 19 and JP Sevilla with the subject "Sentinel wiring 20 info." That gets forwarded by Carter Chism to a 21 number of people and JP Sevilla then forwards it 22 to you. 23 A Okay. 24 Q And we'll have it up here in a second. 25 It's Exhibit 89. I am going to make it</p>
<p>314 1 MS. SMITH: Objection. I would like a 2 copy of the exhibit before you start questioning 3 him and giving him... 4 BY MR. CLUBOK: 5 Q Yeah, sorry, do you have any -- does 6 this refresh your recollection that you had 7 discussions with Stephanie and Isaac about a UBS 8 settlement structure in April of 2017? 9 A No. 10 Q Do you recall ever discussing with them 11 a plan to start a new company to issue the ATE 12 policy? 13 MS. SMITH: Objection as to form. I'd 14 like to see the exhibit, please. 15 BY MR. CLUBOK: 16 Q Do you recall ever discussing with them 17 a plan to start a new company to issue the ATE 18 policy? 19 A No. 20 Q Do you consider yourself to have a good 21 memory? 22 A Depends. 23 Q Do you consider yourself to have a good 24 memory? 25 A It depends on what we're talking about</p>	<p>316 1 bigger here in a second, if Nate let's me. That 2 is probably too big. 3 I'll go down to the bottom email in the 4 chain. As I mentioned, it is wiring instructions. 5 It says: "Sentinel wire instructions 6 for cash arising from transaction below." 7 And it's the subject of Sentinel wiring 8 info and it's dated August 11, 2017. Do you see 9 that? 10 A I do. 11 Q And then there's an email that Carter 12 sends to a bunch of people not including you and 13 it says: 14 "Please confirm this serves as instruction 15 to wire cash from all HFP funds and all CDO Funds 16 to the account listed in the instructions below." 17 Referencing it's Sentinel. 18 Do you see that? 19 A I do. 20 Q And this is money that's all wired to 21 Bank of New York Mellon; correct? 22 A That's what it looks like, yes. 23 Q And the account name is MaplesFS 24 Limited. 25 A Correct.</p>

Conducted on July 29, 2021

<p>317</p> <p>1 Q And it is for Sentinel reinsurance</p> <p>2 Limited, correct?</p> <p>3 A Correct.</p> <p>4 Q And that is all the cash from HFP funds</p> <p>5 and all CDO Funds, according to this, correct?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: No, it actually says:</p> <p>8 "Please confirm this serves as instructions to</p> <p>9 wire cash from all (the funds) and all CDO Funds."</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Okay.</p> <p>12 A Also you've asked me over and over if</p> <p>13 Mr. Surgent knew that Sentinel involved in the</p> <p>14 transaction; he's on this email.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Right.</p> <p>17 A And he didn't know if it was Sentinel.</p> <p>18 That clears that up.</p> <p>19 Q And then this email's forwarded to you</p> <p>20 by JP Sevilla and it says "FYI," do you see that?</p> <p>21 A I did.</p> <p>22 Q You just started shouting a little</p> <p>23 bit --</p> <p>24 A I didn't shout; I was speaking.</p> <p>25 Q Well, we have an audio, so we'll see</p>	<p>319</p> <p>1 before I am, and Cliff Stoops and Frank Waterhouse</p> <p>2 and many others.</p> <p>3 Q Right. Is there a -- all right.</p> <p>4 A It also says "wiring info," if you</p> <p>5 noticed that.</p> <p>6 It doesn't say anything -- unless you</p> <p>7 read down in the chain of what is being wired, so</p> <p>8 I highly doubt if I saw "Sentinel wiring info"</p> <p>9 that I would go and ... (inaudible) into what I</p> <p>10 received. I don't remember this at all.</p> <p>11 Q Right, so you get this email that says</p> <p>12 "Privileged and Confidential, Sentinel wiring</p> <p>13 info."</p> <p>14 A Yes.</p> <p>15 Q And scrolling down just a little bit it</p> <p>16 says:</p> <p>17 "Please confirm this serves as instruction</p> <p>18 to wire cash from all HFP funds and all CDO Funds</p> <p>19 to the account listed in the instructions below."</p> <p>20 It's not a long email; it's one sentence</p> <p>21 under a subject that says in big bold caps,</p> <p>22 "Privileged and confidential" and then says in</p> <p>23 bold "Sentinel wiring info."</p> <p>24 A It's not one sentence. It is further</p> <p>25 on in the chain and it supposedly has an</p>
<p>318</p> <p>1 that you raised your voice there.</p> <p>2 A I also leaned in closer to the</p> <p>3 microphone, maybe that was the issue.</p> <p>4 Q Yeah, well this confirmed the</p> <p>5 instruction to wire cash from all HFP funds and</p> <p>6 all CDO Funds; do you see that?</p> <p>7 A Yeah, I see that.</p> <p>8 Q And it's sent to you, so you certainly</p> <p>9 were aware of that, correct?</p> <p>10 A I was aware of it? I don't even know</p> <p>11 that I read it.</p> <p>12 MS. SMITH: Objection, that</p> <p>13 mischaracterizes this. That first email was not</p> <p>14 sent to him.</p> <p>15 THE WITNESS: Also you asked me if I</p> <p>16 knew all the cash was sent and that's not even</p> <p>17 what this email said. Wire cash from all HFP</p> <p>18 funds and all CDO.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Right, first of all --</p> <p>21 A There's is no schedule of what was</p> <p>22 said. It doesn't say "all the cash" so you</p> <p>23 mischaracterized or your question was different.</p> <p>24 Q Okay.</p> <p>25 A And, again, Mr. Surgent is on this</p>	<p>320</p> <p>1 attachment and furthermore, I got at this time</p> <p>2 period, between 400 and 500 emails a day, so when</p> <p>3 I saw something that is wiring info and, again,</p> <p>4 you kept asking, I knew, I knew, all the cash,</p> <p>5 that's not even what this says. This is wire</p> <p>6 cash. That could be \$5. I don't know. There's</p> <p>7 nothing on this email that even says how much cash</p> <p>8 is being sent.</p> <p>9 Q Looking at this email, it's forwarded</p> <p>10 to you and it says FYI.</p> <p>11 Then there is an email that is</p> <p>12 forwarded to you that has one sentence that says,</p> <p>13 "Please confirm" etc; isn't that true?</p> <p>14 A That is not true because then there's</p> <p>15 from Katie Irving.</p> <p>16 Q Sorry -- just --</p> <p>17 -- (overspeaking) --</p> <p>18 A Chism and JP Sevilla was on the same</p> <p>19 chain. And it is "Sentinel wiring instructions</p> <p>20 from cash arising from transaction..." Doesn't</p> <p>21 say what transaction. "...are below, thank you."</p> <p>22 So, no, what you're saying is not true.</p> <p>23 Q Right, but the -- I'm sorry, when you</p> <p>24 are forwarded an email that has one sentence that</p> <p>25 says, "Confirm this serves as instructions to wire</p>

Conducted on July 29, 2021

<p>321</p> <p>1 cash from all HFP funds and all CDO Funds 2 etcetera..."</p> <p>3 Then if you scroll down, you see that 4 it's Sentinel wiring info and simply the 5 instructions for how to wire the money to 6 Sentinel.</p> <p>7 That's the entirety of the substance of 8 this email.</p> <p>9 A Totally agree. It doesn't have an 10 amount of what was wired or anything or cash -- I 11 don't know if they said \$100 or I don't know if 12 they sent it all. It is completely 13 non-informative of what's being sent, other than 14 cash, generally.</p> <p>15 Q You were well aware that there was a 16 plan to transfer virtually all of the assets from 17 CDO Fund and SOHC and HFP to Sentinel with respect 18 to the ATE policy; isn't that true?</p> <p>19 A No, I do not know what was transferred. 20 I do not know what was contemplated to be 21 transferred in the process.</p> <p>22 Q Okay.</p> <p>23 A As you can tell, when the mechanics 24 were being put here, I'm not included by anyone. 25 JP decides to send me an FYI, which certainly</p>	<p>323</p> <p>1 THE WITNESS: I do.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q And Mr. Dondero knew about this too, 4 right?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Mr. Dondero knew about 7 what?</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Mr. Dondero knew that Sentinel had 10 tried to redeem an interest in Multi Strat; 11 correct?</p> <p>12 A I don't know what Mr. Dondero knew and 13 when he knew it?</p> <p>14 Q Did you ever refer to the interest in 15 Multi Strat being owned by SAS, as opposed to 16 Sentinel in any document, internally?</p> <p>17 A I'm sorry, you broke up. Did I ever 18 what?</p> <p>19 Q Do you know if at Highland it was ever 20 record recorded that the interest in Multi Strat 21 with respect to Sentinel was identified as being 22 with respect to SAS?</p> <p>23 A No, not that I'm aware of.</p> <p>24 Q Would that be a mistake if it was 25 listed that way?</p>
<p>322</p> <p>1 doesn't say I need to take action or approve 2 anything.</p> <p>3 Q You are the 30 percent -- you own 4 30 percent of the economic interest of whatever 5 cash was transferred to Sentinel; correct?</p> <p>6 A Of the ultimate beneficial ownership 7 of entities I'm associated with.</p> <p>8 Q Have you ever received any compensation 9 in any form from Sentinel?</p> <p>10 A No.</p> <p>11 Q Have you ever had a valuation done of 12 Sentinel since the one we looked at?</p> <p>13 A No.</p> <p>14 Q You are aware that one of the interests 15 that was transferred from CDO Fund to Sentinel in 16 August 2017 to pay for the insurance policy, was 17 its interest in a Multi Strat fund?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: No, I don't know what was 20 transferred.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q You know that there was a redemption 23 purportedly by Sentinel with respect to Multi 24 Strat; correct?</p> <p>25 MS. SMITH: Objection to form.</p>	<p>324</p> <p>1 A I believe it would be a mistake because 2 SAS certainly never owned it to my knowledge.</p> <p>3 Q Do you know anything about -- well, 4 does Sentinel today own any interest in Multi 5 Strat, as far as you know?</p> <p>6 A I don't know what Sentinel owns in 7 Multi Strat today.</p> <p>8 Q So, you have no idea one way or the 9 other as to whether Sentinel has any right to any 10 redemption interest it may have claimed with 11 respect to Multi Strat, correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I have no opinion, one 14 way or the other. I don't know what Sentinel 15 owns, that redemption right as to Multi Strat.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q You had Mr. Leventon working -- strike 18 that.</p> <p>19 Did you ever tell Isaac Leventon that 20 the ATE policy was Mr. Dondero's idea?</p> <p>21 A Not that I recall, no.</p> <p>22 Q Did you ever -- in July of 2020, do you 23 recall a time when you and Mr. Leventon were 24 involved with supposedly trying to find 25 information about the assets of HFP, CDO Fund and</p>

Conducted on July 29, 2021

<p>1 SOHC?</p> <p>2 A Yes.</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q And at that time did you discuss the</p> <p>6 ATE policy with Isaac Leventon as to whether or</p> <p>7 not it would be relevant to the -- to that task?</p> <p>8 A Not that I recall.</p> <p>9 Q Did you and Isaac Leventon do</p> <p>10 everything you possibly could to create a true and</p> <p>11 accurate document-based record of what happened at</p> <p>12 HFP, SHOC and CDO Fund with respect to their</p> <p>13 assets since 2009?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 THE WITNESS: We did everything we</p> <p>16 could to fulfill the request of DSI, Pachulski,</p> <p>17 Mr. Seery, etcetera as defined to us.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Please listen to my question and answer</p> <p>20 my question and not yours.</p> <p>21 Is it true that you and Mr. Leventon</p> <p>22 did everything you could do to create a true and</p> <p>23 accurate document-based record of what happened at</p> <p>24 HFP, SOHC and CDO Fund?</p> <p>25 MS. SMITH: Objection to form, asked</p>	<p>325</p> <p>327</p> <p>1 Q Were you responsible for managing</p> <p>2 Sentinel reinsurance and monitoring it?</p> <p>3 A Managing its portfolio?</p> <p>4 Q Let's break that down. Were you</p> <p>5 responsible -- strike that.</p> <p>6 Were you responsible for monitoring</p> <p>7 Sentinel reinsurance for you and Mr. Dondero?</p> <p>8 A No.</p> <p>9 Q Were you responsible for managing</p> <p>10 Sentinel reinsurance in any way?</p> <p>11 A No.</p> <p>12 Q Did you negotiate on behalf of HFP with</p> <p>13 respect to the purchase agreement that I showed</p> <p>14 you?</p> <p>15 A No, I was not involved in the purchase</p> <p>16 agreement at all.</p> <p>17 Q Did you ever direct SOHC's legal</p> <p>18 strategy?</p> <p>19 A Objection to form.</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q After Sentinel reinsurance sold the ATE</p> <p>24 policy, did you ever -- did Sentinel ever direct</p> <p>25 the legal strategy of the insureds?</p>
<p>326</p> <p>1 and answered.</p> <p>2 THE WITNESS: As we were tasked, yes.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Did you ever speak to Dondero about how</p> <p>5 to spend Sentinel's cash when it had cash</p> <p>6 available?</p> <p>7 A No.</p> <p>8 Q Did you craft the ATE policy?</p> <p>9 A No.</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Did you describe the ATE policy fully</p> <p>13 to Mr. Dondero?</p> <p>14 A What do you mean by that?</p> <p>15 Q Did you explain the ATE policy in any</p> <p>16 detail to Mr. Dondero?</p> <p>17 A No, because I didn't know the detail of</p> <p>18 the ATE policy.</p> <p>19 Q Did you make any efforts to get the ATE</p> <p>20 policy through the compliance process?</p> <p>21 A No.</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Can you answer the question, please?</p> <p>25 A No.</p>	<p>328</p> <p>1 A Of the insureds? That would have been</p> <p>2 coming from the directors. I don't know what they</p> <p>3 did.</p> <p>4 Q Did you provide any legal advice with</p> <p>5 respect to the Sentinel transaction?</p> <p>6 A No.</p> <p>7 Q Did you give any advice on behalf of</p> <p>8 HCM in any way, in connection with the Sentinel</p> <p>9 transaction?</p> <p>10 A No, I wasn't involved in the process</p> <p>11 other than the idea.</p> <p>12 Q Did you give legal advice any party</p> <p>13 at all with respect to the Sentinel transaction?</p> <p>14 A No, other than the idea and the initial</p> <p>15 couple, three meetings, I wasn't involved.</p> <p>16 Q Were there any lawyers that you are</p> <p>17 aware of who gave advice with respect to the</p> <p>18 Sentinel transaction?</p> <p>19 A I don't know because I wasn't involved.</p> <p>20 Q Mr. Sargent is not a lawyer; correct?</p> <p>21 A Mr. Sargent is a lawyer.</p> <p>22 Q Oh, Mr. Sargent is a lawyer. Was Mr.</p> <p>23 Sargent giving legal advice in his role as chief</p> <p>24 of compliance?</p> <p>25 A I don't know what Mr. Sargent was doing</p>

Conducted on July 29, 2021

<p>329</p> <p>1 because I wasn't privy to what he was doing.</p> <p>2 Q Okay, I'm going to show you what's been</p> <p>3 marked as Exhibit 82. It's tab 36. And I just</p> <p>4 want to show you the third page of the document</p> <p>5 which is an attachment to the cover email and just</p> <p>6 see if you recognize it.</p> <p>7 That one you should have, I hope.</p> <p>8 A Yes, I do have it.</p> <p>9 Q And you will see the attachment is a</p> <p>10 request for redemption of shares, sent by Multi</p> <p>11 Strategy Credit Fund, care of SEI Investments,</p> <p>12 which we talked about earlier and it purports to</p> <p>13 redeem all the Sentinel's reinsurance business in</p> <p>14 Multi Strat; do you see that?</p> <p>15 A I'm sorry, which page?</p> <p>16 Q It's the third page of Exhibit 82.</p> <p>17 It's the attachment to the email. It's a document</p> <p>18 that's got some handwriting on it and it says</p> <p>19 "Request for Redemption of Shares." Do you see</p> <p>20 that?</p> <p>21 A Yes, I do see it. Sorry; they were</p> <p>22 stuck together.</p> <p>23 Q And have you ever seen this before?</p> <p>24 A I do not believe I have.</p> <p>25 Q Do you see that it's not signed, if you</p>	<p>331</p> <p>1 working for Highland, you mean?</p> <p>2 A Yes.</p> <p>3 Q And you don't remember anything else at</p> <p>4 all about that?</p> <p>5 A No.</p> <p>6 Q Do you remember who told you?</p> <p>7 A No.</p> <p>8 Q Do you remember who you ever discussed</p> <p>9 that issue with, if anyone?</p> <p>10 A I don't remember discussing it with</p> <p>11 anyone?</p> <p>12 Q Where -- who made the recommendation to</p> <p>13 the directors to purchase the ATE policy, as far</p> <p>14 as you know?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q I'm sorry, who made the recommendation</p> <p>18 to the directors of Sentinel to issue the ATE</p> <p>19 policy, if you know?</p> <p>20 A Don't know.</p> <p>21 MS. SMITH: Andy, I don't know about</p> <p>22 the witness, but I would like to take a break.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Sure, we're getting pretty close to the</p> <p>25 end so this is a good time to take a break and I</p>
<p>330</p> <p>1 go to the next two pages. There's no signatures</p> <p>2 at all.</p> <p>3 A Yes, I do.</p> <p>4 Q Do you know whose handwriting that is?</p> <p>5 A I do not.</p> <p>6 Q Do you know whether Sentinel ever</p> <p>7 redeemed its -- tried to redeem its interest, if</p> <p>8 any, in Multi Strat?</p> <p>9 MS. SMITH: Object to the form.</p> <p>10 THE WITNESS: I believe that it did.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Why do you believe that, on what basis?</p> <p>13 A Because I think it was listed as a</p> <p>14 redeemer at some point.</p> <p>15 I think I saw on a table or something</p> <p>16 it was listed as a redeemer.</p> <p>17 Q You saw on a table that Sentinel was</p> <p>18 listed as a redeemer of Multi Strat.</p> <p>19 A I recall that, but I don't have</p> <p>20 certainty of where I saw it, but I thought maybe I</p> <p>21 was told they were a redeemer.</p> <p>22 Q Sorry, you say you saw a document or</p> <p>23 you were told; which is it?</p> <p>24 A I'm sorry, Andy, I don't remember.</p> <p>25 Q And was this while you were still</p>	<p>332</p> <p>1 will try to look through my notes and we'll come</p> <p>2 back for one final session.</p> <p>3 A How long a break?</p> <p>4 MR. CLUBOK: Well, let's make it 15</p> <p>5 minutes and then we'll come back in 15 minutes, if</p> <p>6 that's enough time.</p> <p>7 MS. SMITH: Fine. 5:45.</p> <p>8 MR. CLUBOK: And then we'll call it a</p> <p>9 day after that.</p> <p>10 THE WITNESS: Perfect. Thank you.</p> <p>11 THE VIDEOGRAPHER: We're going off</p> <p>12 record at 6:30 p.m. Eastern Time.</p> <p>13 (Break taken from 6:30 p.m. to 6:48</p> <p>14 p.m.)</p> <p>15 MR. CLUBOK: Next Exhibit is 90. And</p> <p>16 the next exhibit will be 38, tab 34.</p> <p>17 (Deposition Exhibit 90 was marked for</p> <p>18 identification.)</p> <p>19 THE VIDEOGRAPHER: One moment please.</p> <p>20 We're going back on the record at 6:48 p.m.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Mr. Ellington, I've got up on the --</p> <p>23 strike that, Mr. Ellington we're looking at</p> <p>24 Exhibit 38, which is asset transfer agreement</p> <p>25 dated December 31st 2019; do you see that?</p>

Conducted on July 29, 2021

<p>333</p> <p>1 A I do.</p> <p>2 Q And December 31st, 2019 was after the</p> <p>3 bankruptcy had already started, right?</p> <p>4 A Yes.</p> <p>5 Q And after the bankruptcy there's an</p> <p>6 asset transfer agreement between Sentinel</p> <p>7 Reinsurance and an entity called Sebastian Clarke;</p> <p>8 do you see that?</p> <p>9 A I do.</p> <p>10 Q And you -- were you aware of this</p> <p>11 transaction?</p> <p>12 A No, I was not aware of this transaction</p> <p>13 that I recall.</p> <p>14 Q Well, turn to the last page. Do you</p> <p>15 see where it's signed by Matt DiOrio on behalf of</p> <p>16 Sentinel Reinsurance?</p> <p>17 A I do.</p> <p>18 Q And how come Matt DiOrio signed this,</p> <p>19 as opposed to any of the independent directors?</p> <p>20 A You broke up Andy, how come what?</p> <p>21 Q Why did Matt DiOrio sign this as</p> <p>22 opposed to any of the independent directors.</p> <p>23 A I don't (inaudible)...</p> <p>24 Q What's that?</p> <p>25 A I don't know.</p>	<p>335</p> <p>1 independent directors in Sentinel?</p> <p>2 A I don't.</p> <p>3 Q Do you know if the compliance group at</p> <p>4 Highland was advised about this transaction?</p> <p>5 A I don't, but since they're not</p> <p>6 regulating or the compliance group of Sentinel or</p> <p>7 SAS, I don't think they would have been, but I</p> <p>8 don't know.</p> <p>9 Q Do you know who Summit Management</p> <p>10 Limited is?</p> <p>11 A Again, that's a fiduciary services</p> <p>12 group in Cayman, as far as I know.</p> <p>13 Q Do you know if they -- if somebody on</p> <p>14 behalf of them signed this transfer agreement?</p> <p>15 A No, all I've seen is what you've shown</p> <p>16 me and it does not look like anyone signed.</p> <p>17 Q Do you know if there was any analysis</p> <p>18 done with respect to this transaction as to</p> <p>19 whether or not it constituted a fraudulent</p> <p>20 transfer?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: No, I don't. I didn't --</p> <p>23 I don't even know that I ever knew this took</p> <p>24 place. I have no memory of this.</p> <p>25 BY MR. CLUBOK:</p>
<p>334</p> <p>1 Q Did you run this transaction by anyone</p> <p>2 at compliance?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: Not that I'm aware of.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Sebastian Clarke is an entity that you</p> <p>7 have beneficial ownership interest in, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I would have to see the</p> <p>10 documents dated as at the time period 31 December,</p> <p>11 2019 to see if I did.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Well, we previously looked at the SAS</p> <p>14 structure that listed, I believe, Sebastian</p> <p>15 Clarke.</p> <p>16 A I could be wrong but wasn't those</p> <p>17 draftings from Deloitte from 2017?</p> <p>18 Q It's true. So, in December of 2017 you</p> <p>19 have no idea whether you had any economic stake in</p> <p>20 Sebastian Clarke as at the time of this transfer?</p> <p>21 A No, I don't.</p> <p>22 Q Do you know if Mr. Dondero did?</p> <p>23 A I don't.</p> <p>24 Q Do you have any idea -- well, do you</p> <p>25 know if this transaction was identified to the</p>	<p>336</p> <p>1 Q Matt DiOrio, do you have any idea how</p> <p>2 Matt DiOrio came to be involved with this --</p> <p>3 A No I don't.</p> <p>4 Q Did you tell -- did you ever tell</p> <p>5 anybody about this transaction?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: No, I didn't have any</p> <p>8 knowledge about it, so I didn't have an ability to</p> <p>9 tell.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q You had no knowledge whatsoever that</p> <p>12 assets of Sentinel were transferred to Sebastian</p> <p>13 Clarke at any time?</p> <p>14 A Not that I recall, no.</p> <p>15 Q Do you know -- do you know that</p> <p>16 Sentinel, as part of the purchase of the ATE</p> <p>17 policy obtained a note from the DAF that CDO Fund</p> <p>18 generally held?</p> <p>19 A Yes I was --</p> <p>20 -- (overspeaking) --</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: -- I was generally aware</p> <p>23 of that, yes.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Who told you about that?</p>

Conducted on July 29, 2021

<p>337</p> <p>1 A I believe Mark Patrick told me about it 2 after the fact, that it had been part of the 3 assets transferred, but I can't say that with 4 certainty. 5 Q And do you know the economic status of 6 the DAF today? 7 A No, I do not. 8 Q Do you know if that note -- do you know 9 how DCO fund came to hold a note from the DAF? 10 A No idea. 11 Q Do you know if any assets were ever 12 transferred to the CDO Fund to the DAF in exchange 13 for that note? 14 A I do not. 15 Q Who would have been responsible for 16 monitoring that between 2009 and 2017? 17 A Monitoring what? 18 Q Monitoring what happened with CDO 19 Fund's assets? 20 A Oh, I don't know. 21 Q Is a note from the DAF worthless? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I don't have any idea of 24 what the DAF can pay or not pay. I don't know. 25 BY MR. CLUBOK:</p>	<p>339</p> <p>1 Q Is Sebastian Clarke, do you have any 2 idea if Dondero has any economic interest in the 3 Sebastian Clarke at all? 4 A I do not. Let's look at Exhibit 55 5 which also happens to be tab 55, by a happy 6 coincidence. That is -- I think you have that in 7 the binder in front of you. Hold, please. I do 8 have 55. 9 Q Okay, 55 is an email exchange and 10 attaches a unanimous written resolution of the 11 board of directors of Sentinel Reinsurance with 12 respect to the ATE policy. I want you to look at 13 the last email on the chain which ends with Bates 14 number -51. 15 A Okay. 16 Q And this is an email from Kim Willey to 17 Paul Scrivener and Neil Horner; do you see that? 18 A Paul Scrivener and Neil Horner, yes. 19 Q Do you know any of those people? 20 A I don't know any of those people. 21 Q Okay, and then they forwarded -- Paul 22 Scrivener forwards this to JP Sevilla, Lesley 23 Thompson and a number of other people identified 24 at the bottom of the page that starts with or ends 25 in Bates -50; do you see that?</p>
<p>338</p> <p>1 Q Whose idea was it to include the DAF as 2 part of the assets that were transferred to 3 Sentinel? 4 MS. SMITH: Objection to form. 5 THE WITNESS: I think you meant the DAF 6 note? 7 BY MR. CLUBOK: 8 Q Yes, the DAF note. Sorry. 9 A I don't know who came up with any of 10 the assets to be transferred to Sentinel. 11 Q Who had the economic interest in the 12 DAF, as far as you know? 13 A Charities, but from what I understand, 14 that's a DAF donor-advised fund, so there was some 15 type of contribution made and then it's managed, I 16 believe, by outside entities and then the monies 17 were given away, donated to qualifying charities. 18 Q Did Sentinel ever communicate to CDO 19 HoldCo about a promissory note that it held? 20 MS. SMITH: Objection to form. 21 THE WITNESS: I don't know. 22 BY MR. CLUBOK: 23 Q When you found out that the DAF note 24 had been transferred, did you take any action? 25 A No.</p>	<p>340</p> <p>1 A I do. 2 Q And this is August 10th: 3 "As requested by JP, please see in email 4 below the advice followed by ASW." 5 Do you see that? 6 A Yes. 7 Q And Lesley Thompson then writes to JP 8 and Katie and that would have been Katie Irving; 9 correct? 10 A Umm... 11 MS. SMITH: Objection to form. 12 THE WITNESS: Let's see -- well, it 13 doesn't -- it just so -- it doesn't say who it is 14 written to. And above that, JP only responds to 15 Lesley. I don't know which Katie it is. 16 BY MR. CLUBOK: 17 Q Was there another Katie that worked 18 with JP in August of 2017, with respect to the ATE 19 policy that you are aware of? 20 A No, but I don't know that there may be 21 a Katie at these other entities. I just don't 22 know. 23 Q Okay, and Lesley says: "Thank you for 24 all the information and supporting documentation 25 to the recommendation regarding the new ATE policy</p>

Conducted on July 29, 2021

<p>1 to be written by Sentinel Reinsurance." [As read.]</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And you see one final question: Can</p> <p>5 you please confirm that in the event of an adverse</p> <p>6 loss which exceeds the existing assets equity of</p> <p>7 the company, the shareholders will inject the</p> <p>8 necessary capital in order for the company to meet</p> <p>9 (sic) its obligation and maintain its solvency."</p> <p>10 Do you see that?</p> <p>11 A I do.</p> <p>12 Q And now Mr. Sevilla writes back:</p> <p>13 "Lesley, the shareholders have made a</p> <p>14 fundamental commitment both fiscally and</p> <p>15 governance-wise to Sentinel reinsurance for the</p> <p>16 long term, including in the situation of an</p> <p>17 adverse loss."</p> <p>18 Do you see that?</p> <p>19 A I do.</p> <p>20 Q And that -- he does copy Katie Irving</p> <p>21 on it; do you see?</p> <p>22 A Oh, yeah, yeah. I see it now, yes.</p> <p>23 Q Okay, and that's the subject is</p> <p>24 "Sentinel Reinsurance Proposed ATE policy," right?</p> <p>25 A Yes.</p>	<p>341</p> <p>1 Q Is that an accurate statement?</p> <p>2 A Yeah, that's an accurate statement. I</p> <p>3 don't recall having this conversation with JP</p> <p>4 about a fundamental commitment of the shareholders</p> <p>5 both physically and governance-wise, no.</p> <p>6 Q No, no, no. Is the statement that Mr.</p> <p>7 Sevilla makes to Lesley Thompson --</p> <p>8 A Yeah, that's what I'm reading. "The</p> <p>9 shareholders made a fundamental commitment both</p> <p>10 physically and governance-wise to Sentinel</p> <p>11 Reinsurance for the long-term, including the</p> <p>12 situation of adverse loss. Many thanks." [As</p> <p>13 read.]</p> <p>14 No, I don't remember having that</p> <p>15 conversation with him.</p> <p>16 Q And my question is: Notwithstanding</p> <p>17 that you don't remember having that conversation,</p> <p>18 my question is: Is what he is saying here true?</p> <p>19 Is it correct that the shareholders for Sentinel</p> <p>20 Reinsurance had made a fundamental commitment,</p> <p>21 both physically and governance-wise to settle</p> <p>22 reinsurance for the long-term, including in the</p> <p>23 situation of an adverse loss?</p> <p>24 A He could have talked to other</p> <p>25 shareholders. I do not remember talking to him</p>
<p>342</p> <p>1 Q This is August of 2017, shortly before</p> <p>2 the policy is entered into; right?</p> <p>3 A Yes.</p> <p>4 Q Now, Mr. Sevilla then talked to you</p> <p>5 about how to respond to Lesley Thompson, didn't</p> <p>6 he?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Didn't he?</p> <p>10 A Not that I recall, no.</p> <p>11 Q When Mr. Sevilla said the shareholders</p> <p>12 made a fundamental commitment in this -- and this</p> <p>13 word she used, that was based on you authorizing</p> <p>14 him to make that statement, wasn't it?</p> <p>15 A Not that I recall.</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Did you have any -- reading this, does</p> <p>19 it refresh your recollection in any way that you</p> <p>20 discussed the ATE policy with Mr. Sevilla shortly</p> <p>21 before it was entered into?</p> <p>22 A No.</p> <p>23 Q Did you authorize Mr. Sevilla to make</p> <p>24 that statement?</p> <p>25 A Not that I recall.</p>	<p>343</p> <p>1 about this, but we surely had a commitment</p> <p>2 long-term to the reinsurer.</p> <p>3 Q Okay, you were a shareholder of</p> <p>4 Sentinel Reinsurance at the time through entities</p> <p>5 you controlled; correct?</p> <p>6 A Yes, correct.</p> <p>7 Q And Mr. Dondero was a shareholder at</p> <p>8 the time, right?</p> <p>9 A Yes.</p> <p>10 Q And can you identify one other single</p> <p>11 human being in the planet who was a shareholder</p> <p>12 that you know of at Sentinel Reinsurance at the</p> <p>13 time?</p> <p>14 A No, but if the shareholders are</p> <p>15 entities at directors and trustees, he could have</p> <p>16 talked to them and not me. He also could have</p> <p>17 talked to Mr. Dondero who had the controlling</p> <p>18 70 percent shares either directly or indirectly</p> <p>19 held through entities associated with him, and</p> <p>20 that would be plenty for him to make this</p> <p>21 assessment without ever speaking to me.</p> <p>22 Q Right. I didn't ask you for any of</p> <p>23 those things you just answered.</p> <p>24 MS. SMITH: Objection.</p> <p>25 BY MR. CLUBOK:</p> <p>344</p>

Conducted on July 29, 2021

<p>345</p> <p>1 Q In the final time -- few minutes, 2 please listen to my question so I don't have to go 3 beyond the time. 4 A Okay. 5 Q Are you aware of any other human being 6 who was a shareholder in Sentinel, through any 7 entity they controlled, other than you and 8 Mr. Dondero as of August 10th, 2017? 9 A You asked me entities who had human 10 beings either as directors or trustees that he 11 could have spoken to, not -- (overspeaking) -- 12 (inaudible) Mr. Dondero. 13 Q Is there a human being you can name 14 right now who is a shareholder of -- an ultimate 15 shareholder, like you and Mr. Dondero were, of the 16 economic interest or other than you and 17 Mr. Dondero, that you can name? 18 Is there another human being that you 19 can name? Is there another human being you can 20 name who was a shareholder? 21 A Me, personally, but I don't have any 22 transparency of who -- how Mr. Dondero could have 23 (inaudible) this. 24 Q I didn't ask you that question, okay? 25 And this is where -- like, we're in the last --</p>	<p>347</p> <p>1 Q If he testified under oath as to who he 2 spoke to after receiving this email, was that 3 something that you would expect to rely upon? 4 A I don't know if Mr. Sevilla has a 5 perfect memory, but I -- I would not say that he 6 would purposely not tell the truth. 7 Q If Mr. Sevilla said that he was 8 authorized by you to make this statement, would 9 that be true or false, as far as you know? 10 A Solely me? 11 Q Solely you. 12 A I don't see how he could be bound by 13 me, since Mr. Dondero or his related entities 14 owned twice what I did. 15 Q Okay, let's forget about "solely". 16 Maybe he asked both you and Mr. Dondero. But 17 would it be true if Mr. Sevilla testified that you 18 did authorize him to make this statement on your 19 behalf? 20 A I would say that that's true to Mr. 21 Sevilla's memory. I do not have a memory of ever 22 speaking to him about this issue. 23 Q Okay, in August of 2017 had you made a 24 fundamental commitment, both physically and 25 governance-wise to Sentinel Reinsurance for the</p>
<p>346</p> <p>1 hopefully the last hour and I don't want to have 2 to ask you questions that you don't answer them 3 and then I will take more time. 4 -- (overspeaking) -- 5 A I'm trying my best to answer. That I 6 personally know of, no. 7 -- (overspeaking) -- 8 MS. SMITH: Mr. Clubok, you are 9 starting to yell at the witness. 10 BY MR. CLUBOK: 11 Q Mr. Ellington -- 12 A Yes. 13 Q -- can you name a human being that 14 you're aware of who was a shareholder of Sentinel 15 as of August 10th, 2017 other than you and 16 Mr. Dondero? 17 A That I know of? No. 18 Q Okay. And do you know of any person 19 that Mr. Sevilla actually spoke to, other than 20 speculated who he might have spoken to? 21 A I can only say he didn't speak to me, 22 to my recollection, about any of this. 23 Q If Mr. Sevilla -- is Mr. Sevilla an 24 honest person? 25 A I find him to be, yes.</p>	<p>348</p> <p>1 long-term, including in the situation of an 2 adverse loss. 3 A No, I've not made a commitment to 4 adverse loss, which is the question she'd answered 5 at the bottom and I don't know if Mr. Sevilla even 6 answered her question because he doesn't say, 7 "We'll inject the necessary --" If he had that 8 conversation with Mr. Dondero, that certainly 9 didn't (inaudible) to my knowledge. 10 Q Again, I'd like to you answer the 11 question that I've asked you. You just added a 12 lot of information that may or may not be useful, 13 but I'm going to ask you carefully to listen to my 14 question, please, and just answer my question. 15 A Okay. 16 Q Is it true that as of August 10th, 17 2017, you had made a fundamental commitment both 18 physically and governance-wise to Sentinel 19 Reinsurance for the long-term, including in a 20 situation of an adverse loss, true or false? 21 A No. No. 22 Q And then Katie Irving, if you go to the 23 top of this email chain, then forwards on the 24 Sentinel Reinsurance proposed ATE policy to Helen 25 Kim and requests JD execution of the attached; do</p>

Conducted on July 29, 2021

<p>349</p> <p>1 you see that?</p> <p>2 A I do.</p> <p>3 Q And JD means Jim Dondero; right?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q People call Jim Dondero "JD" in emails</p> <p>7 like this, right?</p> <p>8 A Yes, just like they call people other</p> <p>9 shorthand, yes.</p> <p>10 Q Yes, and we see that the -- we know the</p> <p>11 attached does bear Mr. Dondero's signature --</p> <p>12 strike that.</p> <p>13 We saw another document where</p> <p>14 Mr. Dondero had signed the purchase agreement on</p> <p>15 behalf of a number of entities; correct?</p> <p>16 A Yeah, but this entity is not signed by</p> <p>17 Mr. Dondero, only by the directors or a director.</p> <p>18 Q Yeah.</p> <p>19 A Sorry, the directors, my apologies.</p> <p>20 Q And any -- was there any final --</p> <p>21 strike that.</p> <p>22 In around this timeframe, was there any</p> <p>23 final discussion with you and Mr. Dondero about</p> <p>24 the policy or the purchase agreement?</p> <p>25 A No.</p>	<p>351</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay, but you don't remember giving him</p> <p>3 authority to make the statement that he made to</p> <p>4 Lesley Thompson in the email that's 4:18 p.m</p> <p>5 August 10, 2017 in Exhibit 55; correct?</p> <p>6 A No, but, again, if Mr. Dondero gave him</p> <p>7 that my approval or (inaudible) --</p> <p>8 MS. SMITH: Objection.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Stop, stop, stop. Two things. Number</p> <p>11 one, I didn't ask you about Mr. Dondero, so I just</p> <p>12 move to strike and I'm going to ask you one more</p> <p>13 time, please for the remaining hour, just answer</p> <p>14 my question. And the judge has repeatedly --</p> <p>15 you've been there in court when the judge has</p> <p>16 stopped people from doing that, and I'm going to</p> <p>17 ask you now please do not do that for the short</p> <p>18 remaining time we have left.</p> <p>19 Second of all, this is one where you</p> <p>20 said "no" and I think you meant "yes," so please</p> <p>21 just listen to my question. You were so quick to</p> <p>22 jump in with the Dondero thing, that that's one of</p> <p>23 the reasons why I think you said "no" instead of</p> <p>24 just answering my question, so I'm going to jut</p> <p>25 ask you, please, listen to my question and just</p>
<p>350</p> <p>1 Q Are you as sure of that as you were</p> <p>2 that you didn't have a -- strike that.</p> <p>3 Are you saying you don't remember that</p> <p>4 or you're sure you didn't have that conversation?</p> <p>5 A I don't recall any conversation with</p> <p>6 Mr. Dondero about the purchase agreement or the</p> <p>7 policy. Again, I wasn't involved in this process,</p> <p>8 so I wouldn't even have anything to talk to him</p> <p>9 about.</p> <p>10 Q Okay, and are you sure -- strike that.</p> <p>11 Are you just saying you don't recall one way or</p> <p>12 the other or are you pretty certain you did not</p> <p>13 talk to Mr. Dondero in this timeframe?</p> <p>14 A I don't recall one way or the other.</p> <p>15 Q And same thing with Mr. Sevilla, are</p> <p>16 you saying that you are pretty sure you didn't</p> <p>17 give him authority to make that statement on your</p> <p>18 behalf or are you saying you don't remember, one</p> <p>19 way or the other if you did it?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: I do not have any</p> <p>22 recollection nor do I believe that I would have</p> <p>23 given him a guarantee of a situation of adverse</p> <p>24 loss, but, again, if Mr. Dondero gave him that,</p> <p>25 what I said was irrelevant.</p>	<p>352</p> <p>1 answer this.</p> <p>2 Is it true that you did not give Mr.</p> <p>3 Sevilla authority to make the statement he made on</p> <p>4 your behalf in an email that's time-stamped</p> <p>5 4:18 p.m. to Lesley Thompson as reflected in</p> <p>6 Exhibit 55?</p> <p>7 A Well, first of all, Mr. Clubok, I don't</p> <p>8 know whether he makes it on my behalf. He doesn't</p> <p>9 say my name, so I think that, in itself, I don't</p> <p>10 agree with. He doesn't say I said it.</p> <p>11 Q No, Mr. --</p> <p>12 -- (overspeaking) --</p> <p>13 A You said made on my --</p> <p>14 -- (overspeaking) --</p> <p>15 Q -- Mr. Ellington --</p> <p>16 -- (overspeaking) --</p> <p>17 A Sorry, I'm still speaking.</p> <p>18 -- (overspeaking) --</p> <p>19 Q Stop that. That's --</p> <p>20 -- (overspeaking) --</p> <p>21 A -- on my behalf. He doesn't make --</p> <p>22 -- (overspeaking) --</p> <p>23 Q Hold on. I didn't ask what the email</p> <p>24 says about whether he --</p> <p>25 -- (overspeaking) --</p>

Conducted on July 29, 2021

<p>353</p> <p>1 A Yeah you did. You asked me --</p> <p>2 Q No, no, no.</p> <p>3 -- (overspeaking) --</p> <p>4 A -- if the statement which Mr. Sevilla</p> <p>5 made to Lesley was a true statement on my behalf,</p> <p>6 made on my behalf.</p> <p>7 Q No, listen to my question one more</p> <p>8 time, okay. We can all see the statement that Mr.</p> <p>9 Sevilla made, the words that he made on 4:18 p.m</p> <p>10 August 10, 2017 to Ms. Thompson, as reflected in</p> <p>11 Exhibit 55. You see that -- those words, without</p> <p>12 me repeating them again, correct?</p> <p>13 A I do.</p> <p>14 Q My simple question is this: Did you</p> <p>15 authorize Mr. Sevilla to make that statement on</p> <p>16 your behalf?</p> <p>17 A No.</p> <p>18 Q Thank you. Are you sure about that or</p> <p>19 is it just you don't remember one way or the other</p> <p>20 whether you authorized that?</p> <p>21 MS. SMITH: Objection to form. Asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: I've answered you twice.</p> <p>24 I'll answer you again. No. Certain of it.</p> <p>25 BY MR. CLUBOK:</p>	<p>355</p> <p>1 A No.</p> <p>2 Q You never looked -- you've never seen</p> <p>3 this request before today; is that what you're</p> <p>4 saying?</p> <p>5 A No, but the request that you and others</p> <p>6 made would go to presumably Pachulski and then</p> <p>7 they were tasked to the Highland employees to try</p> <p>8 to meet those requests but we were never given the</p> <p>9 direct document request.</p> <p>10 Q Whose the "We" in that statement?</p> <p>11 A The Highland employees.</p> <p>12 Q You say Isaac Leventon never saw this</p> <p>13 document either.</p> <p>14 A I don't know if Isaac saw it or not but</p> <p>15 very commonly we were told what to go and retrieve</p> <p>16 or search for without the actual document request.</p> <p>17 Q Okay, but you just said "we" were never</p> <p>18 given this request.</p> <p>19 Are you saying that no one in the</p> <p>20 Highland legal department ever received this</p> <p>21 request for production of documents?</p> <p>22 A I don't know because I never reviewed</p> <p>23 all their emails.</p> <p>24 Q Were you aware of this request?</p> <p>25 A No.</p>
<p>354</p> <p>1 Q Okay. Did Mr. Sevilla have the</p> <p>2 authority to make that statement on your behalf</p> <p>3 without checking with you?</p> <p>4 MS. SMITH: Objection to form. Asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Did you ever give anyone authority to</p> <p>9 speak on your behalf with respect to what, if any</p> <p>10 commitments you were going to make Sentinel</p> <p>11 Reinsurance?</p> <p>12 A No.</p> <p>13 Q Let's turn to Exhibit 69, which is tab</p> <p>14 44. These are UBS's first request for document</p> <p>15 production for debtor Highland Capital Management.</p> <p>16 It's the first formal document request that was</p> <p>17 made dated September 28th, 2020. Do you see that?</p> <p>18 A Number 69? Oh, yes I see it. Sorry.</p> <p>19 Q Yeah, Exhibit 69 is a copy of what's</p> <p>20 titled "UBS's first request for production of</p> <p>21 documents to debtor Highland Capital Management."</p> <p>22 Do you see that?</p> <p>23 A I do.</p> <p>24 Q Did you receive a copies of those</p> <p>25 requests ever?</p>	<p>356</p> <p>1 Q Were you given any task in connection</p> <p>2 with responding to the document request that's</p> <p>3 been identified as Exhibit 69?</p> <p>4 A I'd have to read the entire request and</p> <p>5 remember if I was ever tasked with any of these</p> <p>6 items.</p> <p>7 Q Well, in September 2020 do you remember</p> <p>8 going forward until the end of the -- of your</p> <p>9 tenure with Highland? Do you remember ever being</p> <p>10 tasked with helping to respond to request for</p> <p>11 production of documents to Highland Capital?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: Dozens upon dozens of</p> <p>14 requests from Pachulski, DSI, the creditor's</p> <p>15 committee, individual creditors, yes.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Well, let's look specifically at</p> <p>18 request number 8, which is all documents</p> <p>19 pertaining to the assets and liabilities of HFP,</p> <p>20 CDO Fund and SOHC, including but not limited to."</p> <p>21 And it is a whole series of sub-parts.</p> <p>22 Do you see that request?</p> <p>23 A I do.</p> <p>24 Q It's request number 8 and it's on page</p> <p>25 -- starts on the bottom of the unnumbered page,</p>

Conducted on July 29, 2021

<p>1 but you see the request which very simply says: 2 "All documents pertaining to the assets and 3 liabilities of HFP CDO Fund and SOHC and then it 4 is including but not limited to and it gives 5 specific examples, right? 6 A Yes, for a 12-year period, yes. 7 Q Yes, do you remember making an effort 8 to identify or help identify all documents 9 pertaining to the assets and liabilities of HFP 10 CDO Funds and SOHC over the period from 2007 11 through 2019? 12 A I do. 13 Q And what efforts did you make to comply 14 with this request, if any? 15 MS. SMITH: Objection to form. 16 THE WITNESS: We were told about this 17 request or at least I was by, I believe, Mr. Seery 18 potentially, not Mr. Seery, maybe Pachulski or 19 DSI, I can't remember because there were so many 20 requests. And myself, Isaac, Ms. Vitiello and 21 Mr. Klos, I remember at least us as the working 22 group, and maybe others were involved, I just 23 don't know, started (inaudible) documents as far 24 back as 2007, which was past the seven-year 25 retention requirements of an RA and it was very</p>	<p>357</p> <p>1 would have been still been in existence under the 2 seven-year retention; correct? 3 A In '11, sure, yes. But this request 4 was made in '20 so the documents aren't 5 necessarily on the system; they've been put on 6 backup tapes and moved to offsite storage. 7 Q Sorry. Was there a document retention 8 hold put in place with respect to the UBS 9 litigation that covered documents going back to 10 2007 with respect to assets of HFP, CDO Fund and 11 SOHC? 12 MS. SMITH: Objection to form. 13 THE WITNESS: I do not know for certain 14 but I would strongly assume there was. 15 BY MR. CLUBOK: 16 Q Well, as GC at least from 2011 forward, 17 did you take responsibility for ensuring that a 18 document hold was put in place to preserve all 19 these documents going back to cover the time 20 period asked for in this request? 21 MS. SMITH: Objection to form. 22 THE WITNESS: Yes, but the document 23 hold would have been issued by Michael Colvin and 24 -- before I was the GC, and then those document 25 holds would have been in perpetuity through the</p> <p>359</p>
<p>1 difficult to start constructing from that far 2 back. 3 BY MR. CLUBOK: 4 Q Okay, but how about just going back to 5 prior seven years to 2012. That would -- those 6 documents would have been available, right? 7 A Yeah, but that's not what's asked for. 8 It's asking starting with seven. 9 You can't just start mid stream and 10 fulfill these, in my opinion. 11 Q And I'm sorry, you had been at 12 litigation with UBS since 2009 over HFP, CDO Fund 13 and SOHC; correct? 14 A Correct, correct. 15 Q Was there a document hold? You were 16 the general counsel of the company during that 17 time. Did you cause a -- 18 -- (overspeaking) -- 19 A No, I was not. No, Michael Colvin was 20 at the beginning of the litigation. 21 Q At the beginning of the litigation. At 22 what point did you become general counsel? 23 A It was, I believe in either '10 or '11. 24 I can't remember. 25 Q And in 2010 or '11, all the documents</p>	<p>358</p> <p>1 end of this period. 2 BY MR. CLUBOK: 3 Q Did you make any effort to refresh the 4 document hold or to affirm that it was being 5 maintained once you became GC, going forward? 6 A No, that's not common practice. The 7 document hold is it in place until it is 8 terminated. 9 Q And so when you -- you started 10 answering this question by saying this was 11 difficult because there is a seven-year retention 12 period, is it fair to say that that normal 13 seven-year retention period should not have 14 applied at all to HFP, CDO Fund and SOHC in light 15 of the litigation that was pending since 2009; 16 correct? 17 MS. SMITH: Objection to form. 18 THE WITNESS: Correct, but in the 19 latter part of my answer, I said that they had 20 been moved to backup tapes and/or offsite storage. 21 BY MR. CLUBOK: 22 Q But were they? 23 A That's the difficulty. Is getting -- 24 and also, the document holds aren't necessarily 25 some of these items, mapping a trial balance of</p> <p>360</p>

Conducted on July 29, 2021

<p>361</p> <p>1 account and requested items. Some of these things</p> <p>2 you requested, from what I understand, never</p> <p>3 existed in the first place.</p> <p>4 Second of all, they were in offsite or</p> <p>5 backup tape storage and there was essentially one</p> <p>6 person that -- or including Ms. Vitiello, two, so</p> <p>7 Mr. Leventon and Ms. Vitiello, that could search</p> <p>8 for these and we had competing agendas that were</p> <p>9 being assigned to us by the independent board,</p> <p>10 Pachulski and others, so it wasn't the only</p> <p>11 request we were working on.</p> <p>12 Q Did you -- as GC, did you ever endeavor</p> <p>13 to keep information about HFP, SOHC and CDO Fund's</p> <p>14 assets in readily available form during the</p> <p>15 pendency of the litigation?</p> <p>16 MS. SMITH: Objection to form --</p> <p>17 -- (overspeaking) --</p> <p>18 THE WITNESS: -- available form.</p> <p>19 (Court reporter clarification.)</p> <p>20 MR. CLUBOK: Okay.</p> <p>21 THE WITNESS: I don't know what you --</p> <p>22 I'm sorry, ma'am. I don't know what you mean by</p> <p>23 "readily available form."</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Did you -- okay. So my question is:</p>	<p>363</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay. You say -- you did not take any</p> <p>3 affirmative steps other than to make sure the</p> <p>4 documents were preserved.</p> <p>5 What specific steps did you take to</p> <p>6 make sure the documents were preserved with</p> <p>7 respect to the assets of HFP --</p> <p>8 -- (overspeaking) --</p> <p>9 A There's protocols in place where</p> <p>10 nothing is destroyed -- (inaudible)</p> <p>11 -- (overspeaking) --</p> <p>12 (Court reporter clarification)</p> <p>13 A There's protocols in place that nothing</p> <p>14 is destroyed and that's why they were moved to</p> <p>15 backup tapes and put into secure offsite storage</p> <p>16 so they are readily available.</p> <p>17 Q When did you do that or cause that to</p> <p>18 be done?</p> <p>19 A I didn't cause it to be done. There's</p> <p>20 protocols in place that were put in place by</p> <p>21 compliance. Compliance is who oversees how these</p> <p>22 documents are handled.</p> <p>23 Q Where is the asset information now</p> <p>24 related to HFP and CDO Fund and SOHC dating back</p> <p>25 to 2007?</p>
<p>362</p> <p>1 Did you make any effort to preserve the documents</p> <p>2 relating to HFP, CDO Fund and SOHC's assets in a</p> <p>3 way that they'd be readily accessible?</p> <p>4 A I don't run the IT system and there is</p> <p>5 a finite amount of space for physical documents,</p> <p>6 so readily available I believe is subjective.</p> <p>7 Q Okay. Move to strike as</p> <p>8 non-responsive. I didn't ask if you ran the IT</p> <p>9 system, I didn't ask you about space.</p> <p>10 I just want you to please listen to my</p> <p>11 question and answer my question directly.</p> <p>12 Did you, as general counsel, once you</p> <p>13 became general counsel, take any steps to ensure</p> <p>14 the preservation of documents relating to the</p> <p>15 assets of HFP, CDO Fund and SOHC in a manner that</p> <p>16 they would be readily accessible?</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 THE WITNESS: I did not take any</p> <p>19 affirmative steps other than make sure the</p> <p>20 documents were preserved as to the litigation hold</p> <p>21 and, if I'm not mistaken, this is after the trial,</p> <p>22 Phase I of the trial so I assumed that those</p> <p>23 documents had been stored in a way that was</p> <p>24 readily available under the constraints of IT and</p> <p>25 physical space.</p>	<p>364</p> <p>1 A I have no idea. I don't work there.</p> <p>2 Q Is there any -- at the time you left</p> <p>3 how would it have been readily accessible if you</p> <p>4 had wanted to obtain it?</p> <p>5 A It was stored by Iron Mountain.</p> <p>6 Q And did you make any efforts to</p> <p>7 retrieve the asset information from Iron Mountain</p> <p>8 relating to HFP, CDO Fund and SOHC?</p> <p>9 A I believe that was absolutely done.</p> <p>10 Q Did you personally make any efforts to</p> <p>11 do that?</p> <p>12 A No, me personally, no --</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: -- because the request of</p> <p>15 Iron Mountain is an IT function.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Did you take any efforts to cause it to</p> <p>18 happen?</p> <p>19 A Yes.</p> <p>20 Q What --</p> <p>21 A Yes.</p> <p>22 Q What exactly did you personally do to</p> <p>23 try to meet these requests from --</p> <p>24 -- (overspeaking) --</p> <p>25 A -- the head of IT and Mr. Leventon, who</p>

Conducted on July 29, 2021

<p>365</p> <p>1 runs the discovery efforts, and said pull back 2 anything you need to fulfill these requests that 3 we are being asked for from the board and 4 Pachulski. 5 Q Okay. And what you did know at the 6 time was that there had been a significant 7 transfer of assets from these funds to Sentinel in 8 August of 2017; correct? 9 A Correct. 10 Q And did you mention that in any way in 11 response to these document requests, to anybody? 12 A No, I did not. 13 Q Did you cause that to be communicated 14 in any way to Mr. Seery or the debtor's counsel, 15 once you knew about this request for documents 16 pertaining to the assets and liabilities of HFP, 17 CDO Fund and SOHC? 18 A I did not. 19 Q Okay. We're going to turn to 20 Exhibit 70, which is tab 45. 21 Oh, strike that. Sorry, one more thing 22 on this exhibit before we turn it... 23 Sorry, that's fine. Let's go to 24 Exhibit 70, tab 45. 25 A Okay.</p>	<p>367</p> <p>1 correct? 2 A Let's see, hold on here. Thursday, 3 August 6. August 6. 4 The farthest back I see is August 6th, 5 so... 6 Q Right. And on August 6th they're 7 talking about giving stuff to UBS today and before 8 they do that, they have to track down some more 9 information, so fair to say that the request came 10 in certainly no later than August 6th? 11 A Yeah, that's fair to say. 12 Q Okay, and Romey sends this email to 13 Leventon and copies some other folks, and then the 14 email gets forwarded -- there is an exchange that 15 continues and if you flip the page, we're going to 16 try to find the first time that you get introduced 17 into it, and it looks like it is on the page 18 that's marked Bates number 115 and Isaac Leventon 19 says in response to an email that Greg Demo sent: 20 "Guys, I don't think this is a prerequisite 21 to delivering materials to UBS in satisfaction of 22 our concerns. I am prepping the documents set for 23 delivery tomorrow. Dave has not worked on this, 24 so I will just call Greg and James. However, this 25 is the current status."</p>
<p>366</p> <p>1 Q That is an email from Scott Ellington 2 to Greg Demo, copying Mr. Leventon, Mr. Romey, 3 Mr. Klos and Mr. Seery; do you see that? 4 A Mr. Klos and Mr. Seery, yes, I do. 5 Q That's the top email and that is a 6 response to a long chain that goes on for several 7 pages and begins with an email that starts on the 8 page marked 17 at the end; do you see that? 9 A 117, yes, I do. 10 Q And this is: "UBS diligent request 11 about Highland credit opportunities, CDO Ltd. 12 Importance: High." And this is from August 2020 13 before those formal requests were sent; do you see 14 that? 15 A Let's see. I don't know the date of 16 when your formal request was sent. 17 Q Well, we just looked at the document 18 that was dated September 2020. 19 A Oh, yeah, I see that now, yes, we 20 looked at it before. 21 Q Right. So the previous -- the formal 22 requests were dated September 28th, 2020. 23 These -- this information request was 24 called UB -- I assume they mean UBS diligence 25 request, came in to prior to August 6th, 2020;</p>	<p>368</p> <p>1 Do you see that? 2 A Yes. 3 Q And all of this was about -- before 4 they're trying to figure out what's the assets on 5 CDO Fund's books with respect to an interest in 6 Multi Strat. That was the subject of the previous 7 emails. And Greg says: 8 "Scott and Isaac, I spoke to Jim about this 9 issue this morning. It is a high priority at this 10 point and we need to do what we can to push to 11 conclusion. 12 I understand that it is going to take some 13 work. 14 Can we schedule a time Wednesday morning to 15 discuss progress and where we're at. I am 16 generally available so whatever works for you will 17 work for me." 18 Do you see that? 19 A I do. 20 Q And that's August 15th, 2020; correct? 21 A Yes. 22 Q And in response you then write your 23 email that starts with: 24 "I don't think there is any need for a call. 25 I can tell you where we are currently."</p>

Conducted on July 29, 2021

<p>369</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And you say how documents were created</p> <p>4 as far back as 15 years ago, and records and</p> <p>5 storage practices were different in 2005; do you</p> <p>6 see that?</p> <p>7 A I do.</p> <p>8 Q And you say in the middle here:</p> <p>9 "As I'm sure you are aware, and I know UBS</p> <p>10 is aware, that the document retention policy of</p> <p>11 the SEC is that the RIAs are required to maintain</p> <p>12 documents for seven years."</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q And you intimated or told various</p> <p>16 people, like you intimated at the beginning of our</p> <p>17 conversation, that there just might not be</p> <p>18 documents available prior to seven years because</p> <p>19 of the supposed retention policies of the SEC.</p> <p>20 Correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: That's not what I said</p> <p>23 at all. I said we were required to retain them</p> <p>24 for seven years. To your point, there was a</p> <p>25 litigation hold here, but the difficulty it had</p>	<p>371</p> <p>1 with the litigation hold requirements; correct?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: What does that have to do</p> <p>4 with anything? I said what we --</p> <p>5 -- (overspeaking) --</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Sir, I --</p> <p>8 A I'm giving an update here, Andy. If</p> <p>9 you are going to ask me a question I'd like the</p> <p>10 opportunity to answer. I am giving a full update</p> <p>11 here to Mr. Demo, and this is an update about how</p> <p>12 many requests (inaudible) want. Jim Seery has</p> <p>13 been copied on all of these and I spoke to Jim</p> <p>14 Seery about what was priorities and what I find</p> <p>15 super-interesting is that this thing was highly</p> <p>16 urgent on August 6th, Greg Demo, in his infinite</p> <p>17 urgency, doesn't even write me back until</p> <p>18 August 15th. He wants to schedule a call on</p> <p>19 August 19th.</p> <p>20 So 13 days later is when he even wants</p> <p>21 to discuss it. I'd say by any anybody's</p> <p>22 estimation that is not highly urgent, especially</p> <p>23 after Mr. Seery, who was the person that did have</p> <p>24 the authority to prioritize all these various</p> <p>25 document requests told me to work the best we</p>
<p>370</p> <p>1 been sent off site.</p> <p>2 Furthermore -- furthermore, we did not</p> <p>3 have a document request from you. This is a</p> <p>4 general request that came in from Pachulski and</p> <p>5 DSI who asked us to go back to 2005 and look for</p> <p>6 very specific information in regards to -- CDO</p> <p>7 Opportunity Master Fund that we then discovered</p> <p>8 had changed names to where they are confused</p> <p>9 themselves. This was a specific search at this</p> <p>10 point relayed to us by Pachulski and DSI, not a</p> <p>11 document request like you showed me.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q You say that there's a document</p> <p>14 retention policing of seven years. You do not say</p> <p>15 anywhere words to the effect of: Oh, but we have a</p> <p>16 litigation hold so we have the documents, or words</p> <p>17 to that effect. You don't say anything about</p> <p>18 that, do you?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: No, and I don't say we</p> <p>21 don't have the documents.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q But you mention a seven-year document</p> <p>24 retention policy but you don't mention anything</p> <p>25 about what, if any, efforts you've taken to comply</p>	<p>372</p> <p>1 could on this, but other things were more</p> <p>2 important at the time.</p> <p>3 Q My question to you was: In this email</p> <p>4 you mentioned a seven-year document retention</p> <p>5 policy?</p> <p>6 A Yes.</p> <p>7 Q You don't mention anything about what,</p> <p>8 if any, efforts you've taken to comply with</p> <p>9 litigation hold requirements with respect to UBS;</p> <p>10 isn't that true?</p> <p>11 MS. SMITH: Objection. Asked and</p> <p>12 answered --</p> <p>13 -- (Overspeaking) --</p> <p>14 THE WITNESS: -- about litigation hold</p> <p>15 requirements. I'm giving an update: Here's where</p> <p>16 we are currently. I'm letting Mr. Demo know that</p> <p>17 there is a seven-year hold on all these documents.</p> <p>18 Some of the things they were asking for, I don't</p> <p>19 think were even subject to the litigation hold</p> <p>20 with UBS because it is before the transaction,</p> <p>21 Andy. They were asking us stuff as far back as</p> <p>22 2005, which is before the transaction with UBS.</p> <p>23 So it wouldn't be subject to the litigation hold.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Okay. Move to strike as</p>

Conducted on July 29, 2021

<p>373</p> <p>1 non-responsive.</p> <p>2 A No, you asked me if I addressed the</p> <p>3 litigation hold, so it is responsive in my</p> <p>4 opinion.</p> <p>5 Q My question to you, and I'd like a</p> <p>6 direct answer to this question, is: In this email</p> <p>7 you mention a seven-year document retention policy</p> <p>8 but you don't mention anything about what, if any,</p> <p>9 efforts you've taken to comply with litigation</p> <p>10 hold requirements with respect to UBS; isn't that</p> <p>11 true?</p> <p>12 A Yes.</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. Continuing on this email, you</p> <p>16 say that -- when you talk about ghost funds you</p> <p>17 don't simply say that they don't have directors or</p> <p>18 officers. You also say they don't have bank</p> <p>19 accounts. They sit dormant and in all caps:</p> <p>20 "No one knows what they truly retain,</p> <p>21 etc."</p> <p>22 Correct?</p> <p>23 THE WITNESS: Yes, it's about the 6,000</p> <p>24 ghost funds in totality, digital description of</p> <p>25 the situation, of various 6,000 ghost funds that</p>	<p>375</p> <p>1 A Correct.</p> <p>2 Q And Mr. Sevilla was another person who</p> <p>3 knew that; correct?</p> <p>4 A Correct.</p> <p>5 Q And Mr. DiOrio was another person who</p> <p>6 knew that; correct?</p> <p>7 A Correct. Mr. Surgent, Mr. Waterhouse,</p> <p>8 Carter Chism, Cliff Stoops, we could list them</p> <p>9 all.</p> <p>10 Q You say then:</p> <p>11 "Isaac and myself have spent in excess of a</p> <p>12 hundred hours trying to piece together everything</p> <p>13 we can to create a true and accurate</p> <p>14 document-based record of what happened with these</p> <p>15 target entities."</p> <p>16 So is it true that you and Isaac together</p> <p>17 spent in excess of 100 hours trying to piece</p> <p>18 together everything you could to create a true and</p> <p>19 accurate document-based record of what happened</p> <p>20 with CDO Fund's assets?</p> <p>21 A Yes.</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: Yes, starting in 2005,</p> <p>24 which we were tasked to do, as you can see in my</p> <p>25 second paragraph.</p>
<p>374</p> <p>1 KPMG came and told me about. Yes.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q But there were people at Highland who</p> <p>4 specifically did know that substantially all of</p> <p>5 the assets of these funds had been transferred to</p> <p>6 Sentinel on or about August 2017; correct?</p> <p>7 A Yes, I'm not talking about just</p> <p>8 Sentinel. I'm talking about 6,000 funds and the</p> <p>9 commonalities they have.</p> <p>10 Q Right. But with respect to HFP, CDO</p> <p>11 Fund, and SOHC, with respect to those three</p> <p>12 specific funds, there were lots of people, you</p> <p>13 said before, at HCM who fully knew that</p> <p>14 substantially all of the assets of those three</p> <p>15 funds had been transferred to Sentinel Reinsurance</p> <p>16 in August 2017; correct?</p> <p>17 A Essentially true and right before the</p> <p>18 break you showed me an email with a bunch of those</p> <p>19 people copied showing wires out of Sentinel -- I</p> <p>20 mean to Sentinel.</p> <p>21 Q And you were one of those people who</p> <p>22 knew that; correct?</p> <p>23 A Correct.</p> <p>24 Q And Mr. Leventon was another one of</p> <p>25 those people who knew that; correct?</p>	<p>376</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q But you knew completely that all of CDO</p> <p>3 Fund's assets had been transferred, or</p> <p>4 substantially all of them had been transferred in</p> <p>5 August 2017 to Sentinel Reinsurance; correct?</p> <p>6 A I did not --</p> <p>7 -- (overspeaking) --</p> <p>8 MS. SMITH: Objection, asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I did not -- sorry. I</p> <p>11 did not know they had been transferred and that's</p> <p>12 not what we were asked to do.</p> <p>13 We were asked to start back in 2005, as</p> <p>14 you can see in the email chain and specifically</p> <p>15 give information on CDO Opportunity Master Fund,</p> <p>16 which became MSCF or MBCDO, and go through that,</p> <p>17 from 2005. That's where we were told to start by</p> <p>18 Mr. Seery.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q You knew when you wrote this email that</p> <p>21 substantially all of CDO Fund's assets had been</p> <p>22 transferred in August 2017 to Sentinel</p> <p>23 Reinsurance; correct?</p> <p>24 A I knew that something was transferred</p> <p>25 and it was a substantial portion.</p>

Conducted on July 29, 2021

<p>377</p> <p>1 Q And there were lots of people that you</p> <p>2 could have identified to Mr. Demo and others who</p> <p>3 could have told them exactly what was transferred</p> <p>4 in 2017 to Sentinel Reinsurance from CDO Fund,</p> <p>5 SOHC, and HFP; correct?</p> <p>6 A Correct, but we were not tasked with</p> <p>7 anything but starting in 2005 and Mr. Seery was</p> <p>8 very clear that we -- that he did not want</p> <p>9 anything that was guess work, that he wanted a</p> <p>10 chain of custody in that entity starting in 2005.</p> <p>11 Q Well, actually, you told him that a</p> <p>12 large majority of your efforts was based in</p> <p>13 educated "guess work." You --</p> <p>14 A Yes, starting --</p> <p>15 Q -- you specifically said that that is</p> <p>16 what you were doing; isn't that right?</p> <p>17 A Yes, starting in 2005 because no one</p> <p>18 was hardly left from that time period and the</p> <p>19 document storage was -- was not up to par, let's</p> <p>20 put it that way.</p> <p>21 Q Sorry, Mr. -- you are telling Mr. Demo</p> <p>22 that a large majority of your efforts was</p> <p>23 supposedly based on educated guess work?</p> <p>24 A Yes.</p> <p>25 Q That was only possible due to your long</p>	<p>379</p> <p>1 MS. SMITH: Objection to form --</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Correct?</p> <p>4 A This task was starting from 2005, go</p> <p>5 from there.</p> <p>6 Q Sorry, you keep answering over</p> <p>7 Ms. Smith's objections and I --</p> <p>8 A My apologies.</p> <p>9 Q -- think the court reporter could not</p> <p>10 get your answer. So I'm going to say it again.</p> <p>11 A Okay.</p> <p>12 Q When you sent this email you were aware</p> <p>13 that there was documented evidence showing exactly</p> <p>14 what happened with CDO Fund, SOHC and HFP's assets</p> <p>15 in 2017; correct?</p> <p>16 A Correct.</p> <p>17 Q And you did not mention that in any way</p> <p>18 to Mr. Demo, Mr. Seery or anybody else; correct?</p> <p>19 A Correct.</p> <p>20 Q And you did not cause that information</p> <p>21 to be shared with them by any of your colleagues</p> <p>22 at HCM; correct?</p> <p>23 A Correct, and I didn't stop anyone from</p> <p>24 sharing it either.</p> <p>25 Q Okay. And is it true that you did --</p>
<p>378</p> <p>1 tenure with the debtor; correct?</p> <p>2 A Yes, because we knew, anecdotally,</p> <p>3 things that people had told us about what went on</p> <p>4 in 2005.</p> <p>5 Q And you're claiming that Mr. Seery,</p> <p>6 though, specifically told you not to engage in any</p> <p>7 educated guess work?</p> <p>8 A (Witness reads document</p> <p>9 unintelligibly.)</p> <p>10 And if you look at the top, Mr. Seery</p> <p>11 is copying me on the email. Do you think if I</p> <p>12 made an assertion that Jim Seery had told me to do</p> <p>13 something and he was copied that he wouldn't have</p> <p>14 corrected it?</p> <p>15 Q Did Mr. Seery tell you not to engage in</p> <p>16 educated guess work?</p> <p>17 A Exactly. He said I want documented</p> <p>18 evidence. I don't care what you guys think you</p> <p>19 know, I want documented evidence.</p> <p>20 Q And you were aware that there was --</p> <p>21 that the email that you were copied on showing</p> <p>22 cash transfers to Sentinel, you were aware there</p> <p>23 was documented evidence showing exactly what</p> <p>24 happened with every one of these funds in 2017;</p> <p>25 correct?</p>	<p>380</p> <p>1 that you were trying to create a true and accurate</p> <p>2 document-based record of what happened with --</p> <p>3 well, strike that.</p> <p>4 You also knew specifically that</p> <p>5 Sentinel Reinsurance had obtained a redemption</p> <p>6 interest in Multi Strat from CDO Fund; correct?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: I became aware of that at</p> <p>9 some point.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q And that awareness came before you sent</p> <p>12 this email; correct?</p> <p>13 A I don't know.</p> <p>14 Q Okay. When you did become aware of</p> <p>15 that did you pass that information on to Mr. Demo</p> <p>16 or to anyone else connected with him or Mr. Seery?</p> <p>17 A I did not pass it on. I believe that</p> <p>18 at some point it was put in a presentation to you</p> <p>19 that there was a redemption.</p> <p>20 Q At some point was there a presentation</p> <p>21 provided to me that showed that Sentinel</p> <p>22 Reinsurance had made a redemption; was that ever</p> <p>23 provided to me?</p> <p>24 A I don't know what was provided to you</p> <p>25 in terms of that.</p>

Conducted on July 29, 2021

<p>381</p> <p>1 Q Sorry, you just said that at some point</p> <p>2 there was a presentation made to me that there had</p> <p>3 been a redemption?</p> <p>4 A Yeah, that there had been a redemption</p> <p>5 but --</p> <p>6 -- (overspeaking) --</p> <p>7 Q -- redemption --</p> <p>8 -- (overspeaking) --</p> <p>9 A -- I think that was prepared by</p> <p>10 Mr. Klos and I believe given to you by</p> <p>11 Mr. Dondero.</p> <p>12 Q Did that presentation show that</p> <p>13 Sentinel Reinsurance had made a redemption?</p> <p>14 A I don't know. I'd have to see it.</p> <p>15 Q Okay. Did that -- did Mr. Dondero ever</p> <p>16 communicate in words or substance that the</p> <p>17 redeemers were unaffiliated with him?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: I wasn't on your</p> <p>20 communications with Mr. Dondero.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q What -- how do you know that a</p> <p>23 presentation was made regarding the subject? Who</p> <p>24 told you?</p> <p>25 A Mr. Dondero wrote an email to me</p>	<p>383</p> <p>1 Multi Strat?</p> <p>2 A Absolutely not that I'm aware of.</p> <p>3 MS. SMITH: And while Mr. Clubok is</p> <p>4 formulating his next question, can I ask the court</p> <p>5 reporter how much time is left.</p> <p>6 MR. CLUBOK: Let's go off the record.</p> <p>7 THE VIDEOGRAPHER: We're going off the</p> <p>8 record at 7:39 p.m.</p> <p>9 (Recess taken from 7:39 p.m. to 7:53 p.m.)</p> <p>10 THE VIDEOGRAPHER: We're going back on</p> <p>11 the record at 7:53 p.m.</p> <p>12 (Deposition Exhibit 90 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q We have an exhibit that's been marked</p> <p>16 as Exhibit 90. Exhibit 90 is the same cover email</p> <p>17 that we previously showed and Ms. Smith had</p> <p>18 objected because at the time we didn't have the</p> <p>19 attachment. We've now created a document, which</p> <p>20 is Exhibit 90, that has both this cover email,</p> <p>21 where Stephanie Vitiello sends to Isaac Leventon</p> <p>22 an attachment, it's a PowerPoint, and she says:</p> <p>23 "Thanks for sending. Based on our</p> <p>24 discussion with Scott, I started updating the</p> <p>25 first few slides. I'll be in by 8 tomorrow ..."</p>
<p>382</p> <p>1 wanting to put something together for a phone call</p> <p>2 with you and he had already asked David Klos for</p> <p>3 it and David Klos produced it before I was</p> <p>4 involved.</p> <p>5 Q And --</p> <p>6 A Or maybe he called me, I can't</p> <p>7 remember, but -- I think he called me, now that I</p> <p>8 remember, but he had already tasked Klos with it.</p> <p>9 Q Where does David Klos work now?</p> <p>10 A Highland, as far as I know.</p> <p>11 Q What's that?</p> <p>12 A As far as I know. I don't know if he's</p> <p>13 still there or not.</p> <p>14 Q Did David Klos at the time that he made</p> <p>15 that presentation know your connection with SAS?</p> <p>16 A Yes.</p> <p>17 Q Did he know Mr. Dondero's connection</p> <p>18 with SAS?</p> <p>19 A Yes.</p> <p>20 Q Did he know SAS's connection with</p> <p>21 Sentinel?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: I assume that he did.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Did -- has SAS made any redemption in</p>	<p>384</p> <p>1 Presumably referring to August 12th, 2017:</p> <p>2 "... so we can edit before we meet with</p> <p>3 Scott if you would like."</p> <p>4 And this is an email that she sends at</p> <p>5 6:28 p.m. on Tuesday April 11th, 2017.</p> <p>6 Do you see that, Mr. Ellington?</p> <p>7 A Yes.</p> <p>8 Q Okay. And before we didn't have the</p> <p>9 attachment so I'm hoping that seeing the</p> <p>10 attachment will refresh your recollection that you</p> <p>11 had had a discussion with Stephanie and Isaac that</p> <p>12 led to them creating this document.</p> <p>13 And if I go down to the next page -- if</p> <p>14 Scott gives me the ability, you can see an early</p> <p>15 version of this settlement analysis. And it says</p> <p>16 "UBS Settlement: Introduction" and it talks about</p> <p>17 what we should say upfront, and "Here's why we</p> <p>18 should settle."</p> <p>19 Do you see where -- and it looks like</p> <p>20 an early draft.</p> <p>21 A I see the words on the page.</p> <p>22 Q Yeah, and it's clearly an early draft</p> <p>23 of whatever's being written; right? It just</p> <p>24 describes things like "brief intro" instead of</p> <p>25 laying out an actual intro?</p>

Conducted on July 29, 2021

<p>385</p> <p>1 A Sure.</p> <p>2 MS. SMITH: Objection to form. I'm</p> <p>3 also objecting to the continuation of the</p> <p>4 deposition to the extent it goes past the</p> <p>5 five-minute mark. We understood from the court</p> <p>6 videographer that we were over time and we agreed</p> <p>7 to give you, as a courtesy, professional courtesy,</p> <p>8 an extra five minutes.</p> <p>9 Also, I still don't have these exhibits</p> <p>10 in the chat.</p> <p>11 MR. CLUBOK: Let's go off the record.</p> <p>12 THE VIDEOGRAPHER: We're going off the</p> <p>13 record at 7:55 p.m.</p> <p>14 (Recess taken from 7:55 p.m. to 7:59 p.m.)</p> <p>15 THE VIDEOGRAPHER: We're going back on</p> <p>16 the record at 7:59 p.m.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Mr. Ellington, I'm referring you to</p> <p>19 Exhibit 90, the page that ends Bates number 433,</p> <p>20 there's a UBS settlement structure that</p> <p>21 contemplates:</p> <p>22 "NewCo Cayman controls HFP/CDO Fund</p> <p>23 assets in (what"); and ..."</p> <p>24 Et cetera, and as set forth on this</p> <p>25 page; do you see this?</p>	<p>387</p> <p>1 the next day, April 12th.</p> <p>2 Let's put up Exhibit 91.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Okay.</p> <p>5 Remember Ms. Vitiello says that she's</p> <p>6 coming in at 8 so they can edit with Mr. Leventon</p> <p>7 before they meet with you, Mr. Ellington.</p> <p>8 Now we look at Exhibit 91, and this is</p> <p>9 an email from 3:26 the next day, and Stephanie</p> <p>10 sends it to Isaac and says:</p> <p>11 "Started making updates ..."</p> <p>12 In response to an email that Isaac had</p> <p>13 sent her at 11:30 a.m. that morning; do you see</p> <p>14 that?</p> <p>15 A I do.</p> <p>16 Q And now we're up to settlement</p> <p>17 structure version 4, according to Stephanie's</p> <p>18 attachment; do you see that?</p> <p>19 A Yeah, I do but the subject line says</p> <p>20 "UBS Settlement Structure v2."</p> <p>21 Q Well, that's what Isaac said at 11:30,</p> <p>22 but this email where Stephanie responds at</p> <p>23 3:26 says version 4; correct?</p> <p>24 A I see that now in the attachment.</p> <p>25 Okay.</p>
<p>386</p> <p>1 A Yes.</p> <p>2 Q And this, again, is an email that was</p> <p>3 sent or a PowerPoint attached to an email sent by</p> <p>4 Stephanie Vitiello to Isaac Leventon on the</p> <p>5 evening of August -- I'm sorry, April 11th, 2017</p> <p>6 where she says based on discussion with Scott she</p> <p>7 started updating the first few slides, and then</p> <p>8 she'll be "in by 8 tomorrow so we can edit before</p> <p>9 we meet with Scott."</p> <p>10 Does seeing this refresh your</p> <p>11 recollection that you discussed a UBS settlement</p> <p>12 structure with Ms. Vitiello and Mr. Leventon about</p> <p>13 potentially starting a new company in Cayman that</p> <p>14 would control the HFP, CDO Fund assets and would</p> <p>15 be part of a UBS settlement structure?</p> <p>16 A No.</p> <p>17 Q Do you deny that you had that</p> <p>18 discussion or you just say you don't remember one</p> <p>19 way or the other?</p> <p>20 A I don't remember having this discussion</p> <p>21 at all.</p> <p>22 (Deposition Exhibit 91 was marked for</p> <p>23 identification.)</p> <p>24 MR. CLUBOK: Okay. We're going to look</p> <p>25 at now Exhibit 91. Exhibit 91 is an email from</p>	<p>388</p> <p>1 Q Okay?</p> <p>2 A Yes.</p> <p>3 Q So she sends her attachment and the</p> <p>4 attachment -- I'm going to go down, if I have</p> <p>5 control here, and I'm going to go down to the page</p> <p>6 that Bates-labeled 508.</p> <p>7 I am going to rotate my screen here.</p> <p>8 And on the page that says 508 it now</p> <p>9 says "If Highland settles" and it still talks</p> <p>10 about:</p> <p>11 "NewCo Cayman controls HFP/CDO Fund</p> <p>12 assets (currently \$94 million) ..."</p> <p>13 So that's new information that's been</p> <p>14 added to this version on April 12th; do you see</p> <p>15 that?</p> <p>16 A I do.</p> <p>17 Q And it still talks about the NewCo and</p> <p>18 HCMLP using "HFP/CDO Fund assets to generate cash</p> <p>19 to pay UBS settlement, Citi, and outstanding legal</p> <p>20 fees."</p> <p>21 Do you see that?</p> <p>22 A I do.</p> <p>23 Q And it talks about this allowing HCMLPs</p> <p>24 to avoid a \$50 million-plus tax liability.</p> <p>25 A Yes.</p>

Conducted on July 29, 2021

<p>389</p> <p>1 Q And how residual assets up to 50</p> <p>2 million will stay at this NewCo Cayman which will</p> <p>3 controlled by Highland, according to this slide;</p> <p>4 do you see that?</p> <p>5 A I do.</p> <p>6 Q Do you remember having a discussion</p> <p>7 with Mr. Leventon and Ms. -- I won't say her name</p> <p>8 right -- how do you pronounce her name?</p> <p>9 A Ms. Vitiello.</p> <p>10 Q -- Ms. Vitiello that is reflected in</p> <p>11 Exhibit 91 on the page that ends in 508.</p> <p>12 A Yes.</p> <p>13 Q Okay.</p> <p>14 A Stop. Did you ask if it refreshed my</p> <p>15 recollection; is that your question?</p> <p>16 Q Yes.</p> <p>17 A No, it does not.</p> <p>18 Q Oh, but you remember having that</p> <p>19 discussion?</p> <p>20 A No, I do not.</p> <p>21 Q Oh, I'm sorry, what did you say "Yes"</p> <p>22 to?</p> <p>23 A I thought you were asking me if I saw</p> <p>24 the language in number 5.</p> <p>25 Q I see. Okay. So you see this slide</p>	<p>391</p> <p>1 chain I want to point you to is Exhibit number 92.</p> <p>2 That ends [sic] in Bates number 593.</p> <p>3 MS. SMITH: Are we on Exhibit 2 now --</p> <p>4 Exhibit 92?</p> <p>5 MR. CLUBOK: We're on Exhibit 92 and it</p> <p>6 ends [sic] in Bates number 593.</p> <p>7 MS. SMITH: Begins at 593?</p> <p>8 MR. CLUBOK: Yes.</p> <p>9 (Ellington Exhibit 92 was marked for</p> <p>10 identification.)</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Yes, and you can see that Mr. Leventon</p> <p>13 has sent Ms. Vitiello at 7:49 p.m. a document he</p> <p>14 calls appendix 1, which is entitled "UBS -</p> <p>15 Settlement Assets" with an Excel spreadsheet, and</p> <p>16 in response, at about 7:56 p.m., Ms. Vitiello is</p> <p>17 sending Mr. Leventon on April 12th a document</p> <p>18 where we are up to version 6 of the UBS settlement</p> <p>19 structure; do you see that?</p> <p>20 A Yes.</p> <p>21 Q And this is all happening -- this is</p> <p>22 all -- approximately 24 hours has passed, or less,</p> <p>23 since we saw that first email when she said that</p> <p>24 she was updating the slide based on conversation</p> <p>25 and would meet with you tomorrow, which was</p>
<p>390</p> <p>1 but seeing this doesn't refresh your recollection</p> <p>2 that you actually met with Ms. Vitiello and</p> <p>3 Mr. Leventon that day and this reflects that</p> <p>4 meeting; is that what your testimony is?</p> <p>5 A No.</p> <p>6 Q And again, are you saying it didn't</p> <p>7 happen or are you saying you don't remember one</p> <p>8 way or the other?</p> <p>9 A I don't remember it happening.</p> <p>10 Q Okay. Do you remember -- so, are you</p> <p>11 saying you do not believe it happened or are you</p> <p>12 saying you don't remember if it did or not?</p> <p>13 A I don't recall that it happened.</p> <p>14 Q Are you saying you don't recall whether</p> <p>15 or not it happened or are you saying that as far</p> <p>16 as you recall it did not happen?</p> <p>17 MS. SMITH: Objection to form. Asked</p> <p>18 and answered.</p> <p>19 THE WITNESS: I have no memory of the</p> <p>20 meeting. I don't know how else to answer the</p> <p>21 question.</p> <p>22 (Deposition Exhibit 92 was marked for</p> <p>23 identification.)</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Okay. So the last exhibit in this</p>	<p>392</p> <p>1 Exhibit 90; is that correct?</p> <p>2 A Yes.</p> <p>3 Q So if we go down Exhibit 92, we now see</p> <p>4 that -- that it looks a lot more like the final</p> <p>5 version that we looked at later. It's got this</p> <p>6 first page that says "UBS vs. Highland," like a</p> <p>7 more -- I think it was version 9 that we talked</p> <p>8 about earlier. Do you see that on page 1?</p> <p>9 Did Mr. Ellington freeze again? Did we</p> <p>10 lose him?</p> <p>11 A I only see half of a cover page.</p> <p>12 Q Scott, I'm sorry, you froze for a</p> <p>13 second or maybe it was me.</p> <p>14 Do you see --</p> <p>15 A Oh no, it's me. It says my internet</p> <p>16 connection is unstable. Is it back to normal?</p> <p>17 Q Okay, yes, you are back to normal. So</p> <p>18 close to being done so let's try to get this last</p> <p>19 one?</p> <p>20 A Okay.</p> <p>21 Q We are on Exhibit 92. I've scrolled</p> <p>22 down and you can see that Exhibit 92, which I</p> <p>23 think is version 6 according to Ms. Vitiello, is</p> <p>24 looking a lot more like the version 9 that we</p> <p>25 talked about earlier today?</p>

Conducted on July 29, 2021

<p>393</p> <p>1 A I apologize, Mr. Clubok, I can still 2 only see the cover page. 3 Q Yeah, I'm only showing that one slide 4 right now. 5 A Okay. 6 Q So right now I'm -- I'll just make it a 7 little smaller so you can see it. 8 A Okay. 9 Q I just looked, showing -- this first 10 slide -- "Settlement Analysis," that looks 11 familiar to you, right? 12 A Correct. 13 Q That was the version that we looked at 14 later -- 15 A Yes. 16 Q -- earlier today, I mean? 17 A Yes. 18 Q So now I am going to scroll down and 19 now it's got more of this detailed information 20 like we saw in the version 9. It says: 21 "If Highland does not settle ..." 22 And what happens if UBS wins or 23 Highland wins. And it has got that: 24 "Bottom line: There is no upside to go 25 to trial in either matter."</p>	<p>395</p> <p>1 Q And then we've put it down, and you can 2 see a lot of these pages are more similar and now 3 we get to slide 6 and now -- and this is 4 August 12th, the day after that slide show she 5 talked about NewCo, now all of a sudden we're 6 talking about Sentinel controlling the assets, 7 "the HFP/CDO Fund assets (currently \$94 million)." 8 Do you see that? 9 A I do. 10 Q And now it says: 11 "Sentinel and HCMLP can use HFP/CDO 12 Fund assets to generate cash to pay UBS settlement 13 ..." 14 Right? 15 A Yes. 16 Q And it talks about HCMLP's \$50 million 17 tax liability but almost all of that is actually 18 Jim Dondero's personal tax liability; right? 19 MS. SMITH: Objection to form. 20 -- (overspeaking) -- 21 THE WITNESS: I don't know if there was 22 an additional HCMLP tax liability. 23 BY MR. CLUBOK: 24 Q Well, if you look here on the list of 25 tax liabilities, it has got 50 million-plus for</p>
<p>394</p> <p>1 On the page that ends at 595 for 2 Exhibit 92; do you see that? 3 A Yes. 4 Q And if we continue, it's got specific 5 information filled in about resulting tax 6 liability and in particular, it's got more than 7 50 million for Dondero? 8 A Yes. 9 Q And then small amounts for other people 10 who were affiliated at one point with Highland, 11 like Todd Travers and Pat Daugherty and some 12 others? 13 A Correct. 14 Q So when you talk about 50 million plus 15 tax liability for HCMLP, most of that is 16 Mr. Dondero's tax liability? 17 MS. SMITH: Objection to form. 18 Objection to form. 19 BY MR. CLUBOK: 20 Q Sorry. When the document refers to 21 50 million plus tax liability later, it -- most of 22 that tax liability is associated with Mr. Dondero 23 with respect to the HCM-affiliated individuals; 24 correct? 25 A Yes.</p>	<p>396</p> <p>1 Dondero and then it has some unaffiliated 2 entities, Crusader, Goldman, and then it has got 3 some individuals that have collectively a couple 4 of million. 5 So, fair to say that HCMLP's 6 50 million-plus tax liability means Jim Dondero's 7 primarily? 8 A I can see why that assumption would be 9 made but I don't know if they're the same. 10 Q Okay. And then it talks about residual 11 assets now up to 50 million staying at Sentinel; 12 right? 13 A Yes. 14 Q So you see over the course of 24 hours, 15 roughly, the proposal has changed from a NewCo in 16 the Caymans that would obtain the assets and 17 somehow settle things, to Sentinel controlling the 18 assets and using the assets to generate cash to 19 settle; do you see that? 20 A Yes. 21 MS. SMITH: Objection to form. 22 BY MR. CLUBOK: 23 Q And in fact on page 8 we now see that 24 the settlement structure now specifically talks 25 about HFP and CDO Fund to buy a \$100 million ATE</p>

Conducted on July 29, 2021

<p>397</p> <p>1 policy from Sentinel in exchange for all the</p> <p>2 assets in HFP/CDO Fund; do you see that?</p> <p>3 A Yes.</p> <p>4 Q And in the span of this 24 hours, did</p> <p>5 Ms. Vitiello have any discussions with the</p> <p>6 independent directors of Sentinel as far as you</p> <p>7 know?</p> <p>8 A I don't know.</p> <p>9 Q Was Ms. Vitiello authorized to call the</p> <p>10 independent directors of Sentinel and discuss this</p> <p>11 matter with them on this day?</p> <p>12 A She could easily have done that. I</p> <p>13 don't know.</p> <p>14 Q Did you authorize her to do that?</p> <p>15 A Not that I recall, no.</p> <p>16 Q Did you authorize Mr. Leventon to have</p> <p>17 any discussions with the independent directors of</p> <p>18 Sentinel to see if they were good with this</p> <p>19 proposed settlement structure reflected on page --</p> <p>20 that ends in Bates number 601 for Exhibit 92?</p> <p>21 A Did I authorize Mr. Leventon? Not that</p> <p>22 I'm aware of, no.</p> <p>23 Q Did you authorize anybody anyone to</p> <p>24 reach out to the independent directors on or about</p> <p>25 April 11th or 12th to see if they would be willing</p>	<p>399</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: No, if their memory is</p> <p>3 better than mine, I don't think they'd be lying.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Okay.</p> <p>6 A It also -- they could have had limited</p> <p>7 input from me. They may have been asking me how</p> <p>8 to organize the slides, if they did meet with me.</p> <p>9 It doesn't mean they asked me for the input of</p> <p>10 numbers. I wouldn't even have known what numbers</p> <p>11 to put in there.</p> <p>12 Q Who came up with the idea to make the</p> <p>13 proposed settlement structure as reflected in the</p> <p>14 page that ends Bates number 601 of Exhibit 92 as</p> <p>15 opposed to the original settlement structure that</p> <p>16 we saw from the day before?</p> <p>17 A I don't know.</p> <p>18 Q It was you, wasn't it?</p> <p>19 A No, it wasn't me. I don't remember</p> <p>20 coming up with this structure. It could have been</p> <p>21 compliance.</p> <p>22 Q It could have been who at compliance?</p> <p>23 A If compliance -- part of the process</p> <p>24 was examining various structures of what was</p> <p>25 possible.</p>
<p>398</p> <p>1 to sell a \$100 million ATE policy in exchange for</p> <p>2 all the assets in HFP and CDO Fund?</p> <p>3 A Did I authorize anyone to do that? No.</p> <p>4 Q Who came up with these numbers in the</p> <p>5 span of 24-hour period between when Ms. Vitiello</p> <p>6 tells Isaac Leventon she spoke to you and they're</p> <p>7 going to have a meeting with you tomorrow at the</p> <p>8 end of the day, April 12th; do you know?</p> <p>9 A No idea if this is again during the</p> <p>10 timeframe where obviously all these ideas were</p> <p>11 being bandied about in large group and subsets of</p> <p>12 the groups. There could have been numerous inputs</p> <p>13 of the list.</p> <p>14 Q Was there a large group that met on</p> <p>15 April 12th on this subject?</p> <p>16 A I cannot remember what times people</p> <p>17 met.</p> <p>18 Q Did you ever meet --</p> <p>19 A It was four years ago.</p> <p>20 Q Did you ever meet just in a small group</p> <p>21 with Mr. Leventon and Ms. Vitiello to discuss this</p> <p>22 structure?</p> <p>23 A Not that I remember.</p> <p>24 Q If either of them said you did, would</p> <p>25 they be lying?</p>	<p>400</p> <p>1 Q You are just totally speculating about</p> <p>2 that, you have no memory of talking to compliance</p> <p>3 at this time about --</p> <p>4 A I didn't say I talked to compliance.</p> <p>5 You asked me who they talked to or who gave the</p> <p>6 input to this and I told you I don't know. And</p> <p>7 you said, "It was you, wasn't it," and I said,</p> <p>8 "No."</p> <p>9 Q But you were certainly involved with</p> <p>10 the proposal that's reflected on the page that</p> <p>11 ends 601 for Exhibit 92; correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I have no memory of this</p> <p>14 at all, period.</p> <p>15 MR. CLUBOK: Okay, that's all that</p> <p>16 I have, I believe.</p> <p>17 Thank you very much. I will say, I</p> <p>18 guess, since we're done with the deposition, just</p> <p>19 to briefly respond, because I don't want to get</p> <p>20 these arguments on the record.</p> <p>21 MS. SMITH: We are on the record.</p> <p>22 THE VIDEOGRAPHER: We are not off the</p> <p>23 record.</p> <p>24 MR. CLUBOK: We can stay on the record,</p> <p>25 I just don't want to have this -- we can go off</p>

<p>401</p> <p>1 the video of the deposition. The court reporter 2 can continue. 3 Let's shut the deposition down and the 4 court reporter can continue. 5 THE VIDEOGRAPHER: This marks the end 6 of the video deposition of Scott Ellington. We 7 are going off the video record at 8:14 p.m. 8 MR. CLUBOK: Just so we don't get into 9 a debate about this. I didn't want to respond to 10 everything that Ms. Smith said either in her last 11 comment or even before, frankly, about the other 12 issues. But, you know, we had a misunderstanding, 13 perhaps, a discrepancy in the time that the 14 videographer believed was left versus the time 15 that we had calculated and I don't know if 16 Ms. Smith had calculated a third time, but in any 17 event, as promised, I kept my questioning time to 18 I think just a few minutes, if you take out the 19 pauses and the time it took to get the exhibits up 20 and the objections and so forth, but hopefully 21 that was satisfactory and, in any event, I think 22 we, you know, I think that's all that needs to be 23 said about that. 24 We would like to serve Mr. Ellington. 25 We would like him not to dodge service of the</p>	<p>403</p> <p>1 Mr. Ellington if he either -- or if either of you 2 counsel, or if he's got other counsel that he can 3 refer us to for that matter would accept service 4 and avoid the expense of trying to achieve 5 service, which -- the experience we had in this 6 case on that was not pleasant and I'm hoping that 7 we don't have that same experience in this other 8 matter. 9 MS. SMITH: I don't want the perception 10 that he's dodging service when he has been in 11 town, you know, 36 hours or 30 hours and now he's 12 been sitting for your deposition. So, how could 13 he be dodging service when he's sitting for your 14 deposition? 15 MR. CLUBOK: Well, we are asking right 16 now through you, that he just simply accept 17 service of these papers. We have a process server 18 who will attempt to serve him beginning, perhaps, 19 tonight and continuing through tomorrow. 20 We hope we do not have to do that. It 21 is very simple. If we can just get an agreement 22 to accept service of those materials then it will 23 save everyone cost and expense and I hope that 24 that's just agreed upon. It is very simple. 25 It will be -- we'll be able to serve</p>
<p>402</p> <p>1 matter that's pending in New York. We'd like him 2 to -- 3 MS. SMITH: You need to go off the 4 record if you are going to be talking about other 5 stuff now. 6 MR. CLUBOK: Well, you brought it up 7 before on the record so I am just going to 8 continue on the record now and say we would very 9 much like Mr. Ellington to simply accept service 10 and not dodge it and not make it difficult for us 11 to serve him. 12 MR SODERLUND: She brought up your 13 violation of the confidentiality of the deposition 14 is what she brought up, Andy. 15 -- (overspeaking) -- 16 MS. SMITH: That's Eric Soderlund from 17 my office. 18 MR. CLUBOK: Yes, it's unhelpful. I 19 believe. 20 In any event, I passed on that request. 21 I want to make it clear that -- 22 -- (overspeaking) -- 23 MR. CLUBOK: I want to make it clear 24 that I have made that request very clearly to 25 avoid the necessity of trying to serve</p>	<p>404</p> <p>1 him but it will be a considerably unnecessary 2 expense, if the last time is the guide. 3 And I would hope that you and the 4 lawyers from Baker McKenzie are advising him not 5 to put us through that. That's all I can do. And 6 if Mr. Ellington has other counsel that are 7 representing him in that matter, then we'd ask 8 through you, Ms. Smith, to alert us to the names 9 of those people so we can avoid and we can move 10 cooperatively in that matter instead of -- 11 eventually we'll get service one way or the other, 12 no doubt, although we may have to go to the court 13 for it and we hope that that is not necessary. 14 MS. SMITH: Are we done? 15 MR. CLUBOK: Yes. Thank you. 16 If you -- if Mr. Ellington, will accept 17 service, if you could please just talk to him 18 after this, please call me back any time and 19 hopefully we can save everybody that trouble. 20 MS. SMITH: I'll talk to my client. 21 MR. CLUBOK: Thank you very much. 22 HOUSEKEEPING 23 MS. SMITH: Ms. Barrett, I would like a 24 draft, please, Frances Smith. 25 MS. McLAUGHLIN: We'll take the draft</p>

Conducted on July 29, 2021

405

1 too and then the final in ten days.

2 MR. CLUBOK: Thank you so much. Thank
3 you Nate, and Lisa and Robert Leonard for sticking
4 around this late.

5 REMOTE TECHNICIAN: I just wanted to
6 confirm as far as the exhibits go, do you just
7 want the new exhibits, 86 through 92, attached to
8 this transcript?

9 MR. CLUBOK: That's a great question.
10 (Deposition concluded at 8:20 p.m. EST)

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406

1 REPORTER'S CERTIFICATION

2 I, Lisa M. Barrett, the officer before
3 whom the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true
5 and correct record of the testimony given; that
6 Said testimony was taken by me stenographically
7 and thereafter reduced to typewriting under my
8 direction; that reading and signing was requested;
9 and that I am neither counsel for, related to, nor
10 employed by any of the parties to this case and
11 have no interest, financial or otherwise, in its
12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand this 10th day of August, 2021.

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LISA M. BARRETT, RPR, CRR, CRC
NOTARY PUBLIC IN AND FOR
THE STATE OF MARYLAND